



# ENVIRONMENTAL ASSESSMENT BOARD

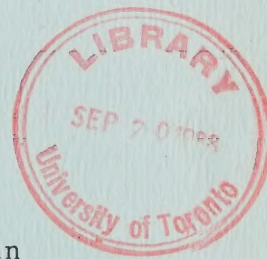
VOLUME: XLIII

DATE: September 6th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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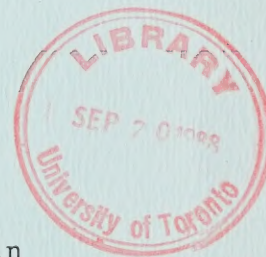
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St., Thunder  
Bay, Ontario, on Tuesday, September 6th,  
1988, commencing at 1:00 p.m.

-----  
VOLUME XLIII

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member





A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH )	RESOURCES
MS. K. MURPHY )	
MR. B. CAMPBELL )	MINISTRY OF ENVIRONMENT
MS. J. SEABORN )	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN )	ASSOCIATION and ONTARIO
MS. E. CRONK )	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY )	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. P. SANFORD )	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD )	POWER & PAPER COMPANY
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	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES )	ASSOCIATION
MR. R. EDWARDS )	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD )	





APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	PRODUCTS
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
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MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
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MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
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MR. P.D. McCUTCHEON	GEORGE NIXON





(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>JOHN R.E. KENRICK,</u> <u>M. MELVIN CRYSTAL, Sworn</u>	7214
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I N D E X   O F   E X H I B I T S

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210	Interrogatory Question No. 4 posed by CELA.	7238
211	MOE Interrogatory Nos. 6, 7, 8 and 9.	7249
212	Interrogatory Question No. 4 from the Ontario Tourist Outfitters Association.	7285
213	Interrogatory No. 14 from CELA.	





1       ---Upon commencing at 1:00 p.m.

2                   THE CHAIRMAN: Thank you. Be seated,  
3 please.

4                   Okay, ladies and gentlemen, if I recall  
5 correctly from last week we are going to start off  
6 today with the next panel -- direct evidence of the  
7 next panel and later today we are going to return to  
8 the submissions concerning the motions of last week  
9 starting with Mr. Campbell who, I understand, will be  
10 here later today.

11                   And we are hoping to finish off the  
12 argument with respect to the motions today. We will  
13 probably sit later to accomplish that, and then  
14 continue on with the panel's evidence tomorrow.

15                   And I mentioned last week, I am not sure  
16 exactly when, we will have the ruling on the motion for  
17 you. It may be towards the end of this week and if not  
18 the end of this week, next week.

19                   Mr. Freidin, are you ready to go with  
20 this panel?

21                   MR. FREIDIN: Mr. Chairman, perhaps I can  
22 begin by filing, as the next exhibit, the Board's copy  
23 of the statement of evidence, Panel No. 6.

24                   THE CHAIRMAN: Okay. According to our  
25 records, Mr. Freidin, we are up to Exhibit 209.

1       ---EXHIBIT NO. 209:     Witness statement for Panel 6.

2                       THE CHAIRMAN:    So this will be Exhibit  
3       No. 209, the witness statement of the evidence of Panel  
4       6.  You will keep your qualifications short and to the  
5       point.

6                       MR. FREIDIN:  I will, but I would like to  
7       begin with an opening statement about the panel before  
8       I qualify the witnesses.

9                       THE CHAIRMAN:  Very well.

10                      MR. FREIDIN:  Mr. Chairman, you will see  
11       that Evidence Panel No. 6 is entitled:  Environment  
12       Affected Ontario Overview and that, in effect, it is  
13       composed of two separate papers; one by Mr. Kenrick who  
14       will be the first witness to give evidence and the  
15       second one being a paper authored by Mr. Crystal, the  
16       title of that document being Report on Treaty and  
17       Aboriginal Rights and Government of Ontario Native  
18       Affairs Policy on Lands and Natural Resources.

19                      Mr. Chairman, the evidence of Mr. Kenrick,  
20       sort of the first part of this panel's evidence, will  
21       be directed to comply in part with the requirement on a  
22       proponent in an environmental assessment to describe  
23       the environment affected.  I say it will comply  
24       partially with that obligation because, as you are  
25       aware, certain parts of the environment affected or

1 potentially affected by the undertaking have been  
2 described in earlier panels and I refer primarily to  
3 the evidence of Mr. Osborn and Mr. Armson dealing with  
4 the description of the forest estate and the evidence  
5 of Panel 5 which dealt with some of the social  
6 environment in terms of communities in northern Ontario  
7 and people in southern Ontario who can be affected by  
8 the undertaking.

9               There are also panels which follow this  
10 panel which will be describing or dealing with that  
11 particular obligation under the Environmental  
12 Assessment Act to describe the environment affected and  
13 I refer primarily to the panel which follows, Evidence  
14 Panel No. 7, which will be describing the sort of  
15 information about the environment which is available at  
16 the management unit level.

17               Because the activities of timber  
18 management have an affect outside the area of the  
19 undertaking, some of the evidence in this panel will  
20 provide information on aspects of the environment  
21 outside the geographical area of the undertaking.

22               The panel will describe the  
23 interrelationships between the physical environment -  
24 and this is Mr. Kenrick's evidence - the  
25 interrelationship between the physical environment of



1 Ontario and how those parts of the environment are used  
2 and valued.

3 And if I could just give you an example.  
4 The first part of Mr. Kenrick's paper will be  
5 describing the physical features of the environment;  
6 for instance lakes, and the second part will in fact be  
7 describing the use of those parts of the physical  
8 environment which he will have described. Speaking  
9 with fish and lakes, he will describe the environment  
10 in relation to commercial fishermen, recreational  
11 anglers and that sort of thing.

12 The evidence of Mr. Kenrick will also  
13 describe the framework which will be used by the panels  
14 describing the specific timber management activities of  
15 access, harvest, renewal and maintenance. He will  
16 provide the framework to be used by those panels in  
17 describing the activities when we describe potential  
18 environmental effects at the management unit level.

19 And what I am referring to, Mr. Chairman,  
20 is the description of the users of the resource as  
21 stakeholders. You may recall my opening remarks  
22 indicating that the effect on the environment would be  
23 described by referring to various stakeholders and you  
24 will recall the evidence of Mr. Monzon who indicated in  
25 Panel No. 1 that stakeholder seemed to be a more

1 neutral term and referred to any person with an  
2 interest in an outcome of a resource management  
3 decision as opposed to the former terminology which was  
4 client group or interest group which some people found  
5 offensive because it implied there was some sort of a  
6 bias.

7                   So Mr. Kenrick will be describing  
8 stakeholders and how in fact they relate to the  
9 physical environment. And, again, it will be a  
10 framework which will be used in subsequent panels. In  
11 relation to those stakeholders, Mr. Kenrick will  
12 describe the matters of interest to each of the  
13 stakeholders and, in addition, the groups or  
14 individuals that the Ministry consults in relation to  
15 those interests.

16                   The second part of the panel's evidence  
17 will be given by Mr. Crystal. The first point I want  
18 to make - and I want to make it clearly - and it is a  
19 point which must be understood by all the parties to  
20 this hearing, in particular those representing native  
21 groups. This panel is not going to be the only  
22 evidence panel that deals with issues of concern to  
23 native people.

24                   It is my submission, Mr. Chairman, that  
25 native people and, in particular, the activities which

1 native people engage in, have the potential to be  
2 affected by timber management activities. And,  
3 therefore, all the panels which describe those  
4 activities, the potential effects of them, both  
5 positive and negative, and how the Ministry of Natural  
6 Resources believes potentially detrimental effects can  
7 be prevented, mitigated, minimized or reduced are all  
8 panels will be of interest to all the parties who were  
9 concerned about potential effects on the environment,  
10 including being of interest to native peoples.

11 I won't take the time to refer the Board  
12 to the government review, but in Exhibit No. 5 at page  
13 243 to 241 there is a letter of December the 3rd, 1987  
14 from Mr. Douglas to Mr. Krasnik, Mr. Krasnik being the  
15 Director of the Ontario Native Affairs Directorate and  
16 in that particular document there are examples given as  
17 to how the Ministry of Natural Resources view native  
18 people might be affected by timber management  
19 activities both positively and negatively.

20 I would suggest that in addition to the  
21 panels which are describing the activities and the  
22 potential effects of them, the planning or the panels  
23 which deal with the planning of those activities and  
24 the monitoring of approved activities are also topics  
25 relevant to people concerned with the effects of timber



1 management on the environment.

2 In relation to a desire that only one  
3 panel would deal with issues of concern to native  
4 people, it is my submission, Mr. Chairman - and I am  
5 not making any apologies for this - it is not possible  
6 to isolate one panel to discuss the relationships  
7 between timber management and native people without  
8 first having at least an understanding of the timber  
9 management activities themselves and, as I have said,  
10 the planning, the implementation and the monitoring of  
11 those activities.

12 That being the Ministry's position, Mr.  
13 Chairman, one might ask: Well, why has the Ministry  
14 included as part of this panel or any panel evidence  
15 which will deal with the nature and character of treaty  
16 and aboriginal rights. As I have already indicated,  
17 Mr. Chairman, the Act requires the proponent to  
18 describe the potential effects of the activities on the  
19 environment and when considering what this can involve  
20 when native people are concerned, the question which  
21 often is posed is: Well, if you are going to be  
22 talking about the environment affected and you're going  
23 to be talking about native people, could you tell us  
24 how timber management activities have an effect on  
25 treaty and aboriginal rights. That is the way the

1 question gets posed from time to time.

2 It is the Ministry's position that this  
3 question cannot be answered without a clear definition  
4 of what those treaty and aboriginal rights are. It is  
5 the Ministry's position that at this time the nature  
6 and the character of those rights are largely  
7 undefined, they are the subject of litigation before  
8 all levels of court in this country, as well as being  
9 the subject of constitutional negotiations and, in some  
10 cases, they are the subject of negotiations between the  
11 Province of Ontario and representative native  
12 organizations such as the Nishnabe-Aski Nations.

13 As a result, Mr. Chairman, it is the  
14 Ministry's position, in my submission, that it is not  
15 advisable or appropriate for this Board to enter into  
16 that particular issue and, that is, the attempt to  
17 define what treaty and aboriginal rights are and I can  
18 advise you, Mr. Chairman, that that is the view not  
19 only of the Ministry of Natural Resources, but it is  
20 the view of the Ontario Native Affairs Directorate.

21 Now, dealing with the question: Why are  
22 we dealing with treaty and aboriginal rights, I would  
23 also want to refer you to two portions of the  
24 transcript from either the first day or second day,  
25 page 216 of the transcript, where I will refer to

1 opening remarks by Mr. Hunter and page 252 of the  
2 transcript where I will refer to submissions made by  
3 Mr. Colborne at the opening of the inquiry.

4 And you will see, Mr. Chairman, that  
5 different positions were taken by those two gentlemen  
6 on behalf of their clients and because of that  
7 difference of opinion, it really in effect, I would  
8 suggest, put the Ministry between a rock and a hard  
9 place as to whether these aboriginal and treaty rights  
10 would have to be dealt with and if so, how.

11 So if I just might, on page 216 Mr.  
12 Hunter stated an I am quoting:

13 "Mr. Fox, in his address to you in  
14 Thunder Bay..."

15 And he's referring to the preliminary  
16 hearing in Thunder Bay:

17 "...stated..."

18 I now will read to you a quote of Mr.

19 Fox:

20 "That we as a tribal council are not here  
21 to speak to the Board about our  
22 self-government rights, the rights which  
23 we believe are inherent because of the  
24 simple fact that we were here first.

25 We are not here to speak about treaty or



1                   aboriginal rights. We are here to  
2                   participate in a quasi-judicial forum  
3                   whose decisions will shape the future of  
4                   timber forestry activities in northern  
5                   Ontario."

6                   I would suggest to you that Mr. Hunter and  
7                   Mr. Fox were in agreement with the position being taken  
8                   by the Ministry of Natural Resources today that this  
9                   Board should not delve into the area of defining treaty  
10                  and aboriginal rights. I would submit to you that the  
11                  material which has been filed and the purpose for which  
12                  Mr. Crystal will be giving his evidence, which I will  
13                  explain in a moment, should not change the view of Mr.  
14                  Hunter or his client as indicated during the opening  
15                  days.

16                  Now, in contrast to Mr. Hunter's remarks,  
17                  Mr. Colborne stated at page 252 as follows:

18                  "We see these hearings now, we will be  
19                  focusing on two types of issues in our  
20                  territory. Firstly, we are going to want  
21                  to know from the witnesses and, in  
22                  detail, which forest management practices  
23                  are in accordance with honouring our  
24                  treaty rights and which ones are not.  
25                  Where they are not in accordance with

1                   our treaty rights we will be advising of  
2                   changes that must be made."

3                   And secondly he said:

4                   "We will be focusing on why the jobs and  
5                   profits from the forest never remain in  
6                   our communities."

7                   So in my submission, Mr. Chairman, it was  
8                   quite clear from day one or two that there was a  
9                   difference of opinion of at least two of the native  
10                  groups that are represented here and it was partly as a  
11                  result of that difference of opinion that it was felt  
12                  advisable to have the subject matter of Mr. Crystal's  
13                  paper put before the Board in evidence.

14                  Now, I refer to treaty and aboriginal  
15                  rights being largely undefined but I want to make it  
16                  clear that that does not mean that there is a vacuum or  
17                  a complete absence of judicial guidance on that issue.  
18                  And one of the purposes of Mr. Crystal's evidence will  
19                  be to describe what guidance has been provided to date  
20                  and that will have some impact on the evidence he will  
21                  give in relation to Ontario Government policy in  
22                  relation to native matters.

23                  Again, Mr. Chairman, I will not take the  
24                  time to refer you to or read from the Environmental  
25                  Assessment Document, but I would refer you to page No.

1       7, the last two full paragraphs which basically outline  
2       some of the remarks that I have made this afternoon. I  
3       should also make it quite clear, Mr. Chairman, that the  
4       evidence that the Board should hear should not be  
5       affected by the position being taken by the Ministry of  
6       Natural Resources on this particular point.

7                   The Board must consider the environment  
8       affected and must devise appropriate terms and  
9       conditions to protect it where it believes it is  
10      appropriate to do so. The Board will, I am sure, hear  
11      considerable evidence from native people regarding  
12      their concerns and I do not believe that the Board need  
13      feel constrained in identifying social, economic or  
14      environmental values which are in need of protection or  
15      in imposing appropriate terms as a result of that  
16      evidence.

17                   What I will urge the Board not to do is,  
18      in considering that evidence, that the Board should not  
19      make orders or impose terms or conditions based on what  
20      I would refer to as a misunderstanding of treaty and  
21      aboriginal rights. Those matters, as I indicated, are  
22      not clearly defined. So that if the Board believes  
23      there are values to be protected, values which arise  
24      out of a concern regarding potential effects of timber  
25      management activities on native people, then impose

1       those terms and conditions based on the identification  
2       of an environmental value to be protected but not on a  
3       misunderstanding of treaty and aboriginal rights or  
4       some sense that there is a legal obligation on the  
5       province to, in fact, do certain things because of  
6       treaty rights or aboriginal rights.

7               The fact that treaty and aboriginal rights  
8       are not well defined, Mr. Chairman, does not mean that  
9       the government of this province or Ministry of Natural  
10      Resources takes the position that there is no special  
11      interest of native people which needs addressing in  
12      this inquiry.

13             Now, that special interest that I refer  
14      to, again, as is the case with treaty and aboriginal  
15      rights, something which it is difficult to define, but  
16      it has been addressed through the development and  
17      application of government policy related to native  
18      people and government policy - and I stress government  
19      policy, not necessarily the Ministry of Natural  
20      Resources policy - but government policy related to  
21      native people is the topic of the second part of Mr.  
22      Crystal's paper.

23             You have indicated, Mr. Chairman, in  
24      relation to other matters that the Environmental  
25      Assessment Board must consider government policy in its



1        deliberations and, for that reason, I believe that the  
2        evidence regarding the Ontario Government policy re:  
3        native affairs on lands and natural resources is useful  
4        information for the Board to have. For that reason,  
5        again, the decision to deal with that particular topic.

6                    I indicated that the Ontario Native  
7        Affairs Directorate were in agreement with the position  
8        being taken here today in relation to whether the Board  
9        should delve into an inquiry of treaty and aboriginal  
10       rights, although I can have Mr. Crystal testify to this  
11       because the involvement or the position of the Ontario  
12       Native Affairs Directorate came up as a matter of  
13       discussion right off the bat as a result of some  
14       remarks I made in my opening comments.

15                   I want to advise the Board now that the  
16        paper which is going to be presented by Mr. Crystal was  
17        authored by Mr. Crystal, but it has been reviewed and  
18        its contents have been approved by the Ontario Native  
19        Affairs Directorate. There will be no question that  
20        that particular statement is correct. We will not  
21        reconsider that because that, in my submission, is an  
22        accurate statement.

23                   Now, with those comments, Mr. Chairman,  
24        perhaps I could move on and qualify the witnesses.

25                   First, if I could qualify Mr. Kenrick

1       whose CV commences on page 1.

2                       Q.   Mr. Kenrick I understand that you  
3       graduated from the University -- was it the University  
4       of Toronto?

5                       MR. KENRICK:   A.   That's correct.

6                       Q.   With a Bachelor of Arts Degree in  
7       1971.   That thereafter you took up employment with the  
8       Ministry of Natural Resources and you have been  
9       employed by the Ministry of Natural Resources since  
10      that time in a number of different positions?

11                      A.   That's correct.

12                      Q.   That you were a planning technician  
13      in Kirkland Lake District in 1971-73 at which time you  
14      coordinated and developed a resource inventory of the  
15      Kirkland Lake District which mapped land use and  
16      resource potential within the district?

17                      A.   That's correct.

18                      Q.   That from 73-76 you were a district  
19      planner in the Temagami District and there you were  
20      involved in a number of matters which are outlined  
21      briefly on page 4 of the witness statement, the first  
22      being one the implementation and monitoring the Lake  
23      Temagami Plan;   is that correct?

24                      A.   That's correct.

25                      Q.   I understand that plan created a

1        number of zones around Lake Temagami which prescribed  
2        various degrees of future development from no  
3        development to a large cluster backshore subdivision?

4                    A.    That's correct.

5                    Q.    And you had responsibilities in  
6        relation to the monitoring of compliance with that  
7        particular plan?

8                    A.    Yes.

9                    Q.    That you reviewed internal and  
10       external plans -- that is internal and external plans  
11       from government for impacts on Ministry programs and on  
12       the environment?

13                   A.    That's correct.

14                   Q.    And that that would involve  
15       negotiating with developers, the type of measures which  
16       in fact would be designed for protecting aesthetic  
17       values and to avoid sensitive areas; is that correct?

18                   A.    Yes.

19                   Q.    From 76-1984 you moved to the  
20       regional office and you became senior regional planner  
21       from the northern region of the Ministry of Natural  
22       Resources?

23                   A.    Yes.

24                   Q.    And I understand that in that  
25       particular capacity you drafted a Strategic Land Use

1 Plan for northern Ontario which has been marked as an  
2 exhibit?

3 A. Yes.

4 Q. And that draft of the plan takes  
5 place between the assembly of the background  
6 information and the actual issuance of a proposed  
7 policy; is that correct?

8 A. Yes.

9 Q. That you also directed the completion  
10 of seven District Land Use Guidelines?

11 A. Correct.

12 Q. I also understand that you had  
13 responsibilities in relation to environmental  
14 assessment during your time as a senior regional  
15 planner?

16 A. Yes.

17 Q. And that that involved having input  
18 into class environmental assessments which were being  
19 prepared in the mid-70s and ensuring districts in the  
20 northern region applied with exemption orders which  
21 were in place including the exemption for timber  
22 management?

23 A. That's correct.

24 Q. I understand from 1984-1985 you were  
25 the regional planning coordinator and the regional



1 conservation authority program supervisor?

2 A. Correct.

3 Q. And a large part of your work there  
4 involved conflict resolution arising out of planned  
5 resource management activities including those arising  
6 out of proposed timber management activities?

7 A. That's correct.

8 Q. And that your present position --  
9 pardon me. You then became the district manager in  
10 Moosonee and held that position for approximately two  
11 years?

12 A. That's right.

13 Q. And that your present position is  
14 Deputy Regional Director, Program Control Support  
15 northern administrative region of the Ministry of  
16 Natural Resources?

17 A. That's correct.

18 Q. And your responsibilities in that  
19 particular area are outlined on page 1 of the witness  
20 statement?

21 A. That's correct.

22 Q. Now, in response to an interrogatory  
23 from Nishnawbe-Aski Nation, Mr. Hunter was advised that  
24 you would be -- we would seek to qualify you as an  
25 expert in the collection and use of resource data in

1 resource management planning and in line management.

2 Can you just define what is meant by line management?

3 A. Yes. In my opinion the pivotal line  
4 management position in the Ministry is that of District  
5 Manager, the front line, if you will.

6 I had the pleasure of serving for several  
7 years in that position in Moosonee from 85-87. In that  
8 position, I had responsibility for delivering all of  
9 the Ministry's goods, services and programs in the  
10 district - about 22 per cent of the province in that  
11 instance - managing the Ministry's human, financial and  
12 physical resources in that district and probably the  
13 most important part, dealing directly with various  
14 interest groups, issues management, finding solutions  
15 to problems.

16 Q. And that's what you primarily meant  
17 by line management?

18 A. That's how I define it.

19 Q. Now, in addition to your curriculum  
20 vitae that we have reviewed briefly here and the  
21 written description of your qualifications, can you  
22 advise whether there is anything else that you believe  
23 should be considered by the Board when they determine  
24 whether you should be qualified to give expert evidence  
25 along the area that I have identified, the collection

1       and use of resource data in resource management  
2       planning and line management?

3                   A. Yes. I think there is a parallel  
4       between my career with the Ministry and the use of  
5       information or data in the Ministry.

6                   From 66-73, largely through the period in  
7       Kirkland and, to some extent, Temagami, I collected the  
8       information: Water quality surveys, recreational user  
9       surveys, fish inventories, cottage-type surveys,  
10      archaeological inventories and created a district  
11      database. That's the first use and understanding of  
12      the information in the first place.

13                  From that time, largely through my time  
14      in Timmins, I used the data, was on the receiving end  
15      of it, if you will, as a planner arraying options for  
16      consideration by management. I was about nine years  
17      involved in that. The biggest portion of that time was  
18      dealing with information at a regional or strategic  
19      level, the Strategic Land Use Plan for northeastern  
20      Ontario. That was an overview, using data in an  
21      overview sense, very similar to what I am doing here.

22                  After that I moved on to a line  
23      management position where I was now the person that the  
24      data and options were passed to to make the -- I was on  
25      the decision-making end, if you will, of some of that

1 information, making decisions, using the type of  
2 information that I had formerly collected and created  
3 options with.

4 And most recently, the Deputy Regional  
5 Director in the northern region where again I use  
6 information but, more often, the position is now  
7 harnessing and directing the type of physical and human  
8 resources that are needed to address some of those  
9 problems that the data might have arranged in the first  
10 place.

11 Q. And you described that your evidence  
12 in this particular panel is going to be an overview and  
13 I understand that Panel No. 7 which will provide  
14 details of the particular types of information and  
15 how -- I guess, in detail, how they are in fact  
16 collected, how this information is collected sort of  
17 goes hand in hand with your particular evidence?

18 A. That's correct. My evidence will be  
19 the overview.

20 MR. FREIDIN: Mr. Chairman, I would ask  
21 that Mr. Kenrick be then designated as an expert in the  
22 collection and use of resource data in resource  
23 management planning and in line management.

24 THE CHAIRMAN: Any objections to that  
25 qualification?



1 (no response)

2 Very well, he will be qualified in that  
3 area.

4 MR. FREIDIN: If I might then move on to  
5 Mr. Crystal whose curriculum vitae commences at page 15  
6 of the witness statement.

7 Q. Mr. Crystal, I understand that you  
8 are a lawyer and you were called to the Ontario Bar in  
9 April of 1980?

10 MR. CRYSTAL: A. That's correct.

11 Q. That after you were called to the  
12 Bar, you practiced from July of '81 to September of --  
13 pardon me, you practiced for a short period of time  
14 with a law firm in Toronto dealing primarily with civil  
15 and criminal litigation?

16 A. That's correct.

17 Q. That from July, 1981 to September of  
18 1983 you were the vice-president of IPI Publishing  
19 Limited. Could you please advise what that company was  
20 involved in and what your responsibilities were?

21 A. Yes. IPI Publishing -- IPI is in the  
22 public interest and it was a small publishing company  
23 that was involved in the creation and publication of  
24 educational materials for the study of law in the  
25 school system and also for publication of law materials

1       for people generally interested in informing themselves  
2       on those issues and they are sold in the ordinary  
3       bookstores as well.

4                       Q. I understand that in September of  
5       1983 you joined the Legal Branch of the Ministry of  
6       Natural Resources and you remained employed in that  
7       particular branch until January of 1987?

8                       A. That's correct.

9                       Q. And from your CV I see that a great  
10      deal of the matters that you were involved in related  
11      to native issues; is that correct?

12                      A. Yes. If I could summarize those for  
13      you very briefly. I suppose one of my main  
14      responsibilities was providing legal opinions on land  
15      claims and natural resources negotiations for the  
16      Office of Indian Resource Policy at the Ministry of  
17      Natural Resources.

18                      But, in addition to that, I was also the  
19      supervisor of litigation that was carried on in the  
20      Legal Branch of the Ministry of Natural Resources and  
21      much of that litigation was in the form of  
22      prosecutions. And the one area of prosecutions which I  
23      took a most active role in was prosecutions relating to  
24      native people in their use of natural resources.

25                      I was also involved in the preparation of

1 Orders-in-Council, Orders-in-Council relating to native  
2 issues, and I was also legal counsel to the Negotiator  
3 in various land claims at the table in negotiations on  
4 land and resource issues with native people.

5 Q. I understand that in January of 1987  
6 you became the Special Negotiator of native issues and  
7 held that position until February of 1988.

8 First, I understand that was a position  
9 within the Ministry of Natural Resources; is that  
10 correct?

11 A. That's correct, yes.

12 Q. And could you briefly describe your  
13 responsibilities as the Special Negotiator?

14 A. Yes. I was responsible for  
15 conducting a set of negotiations on behalf of the  
16 Government of Ontario relating to native people and  
17 their land and resource issues.

18 Essentially I was involved in  
19 negotiations relating to fishing, hunting, trapping,  
20 the harvest of wild rice and I was also responsible for  
21 the conduct of negotiations of several different land  
22 claims. At the same time I was responsible for  
23 advising and briefing the Deputy Minister and the  
24 Minister of Natural Resources on various different  
25 issues relating to native concerns with the Ministry.

1                   I was also involved, to some extent, in  
2                   the formulation of some policy during that period of  
3                   time, in particular, certain policies that related to  
4                   fishing and trapping.

5                   Q.   And I understand that in February of  
6                   1988 the position of Special Negotiator of Native  
7                   Issues ceased to exist within the Ministry of Natural  
8                   Resources and from that time until the present that you  
9                   have been the Coorindator of Native Issues for the  
10                  Ministry of Natural Resources?

11                  A.   Yes.

12                  Q.   And could you explain to me the  
13                  reason for the change or the disappearance of the  
14                  position Special Negotiator and the creation of your  
15                  present position?

16                  A.   Yes.   In February of 1988 it was not  
17                  only the position of Special Negotiator Native Issues,  
18                  which ceased to exist, that was also the end of the  
19                  period of time in which the Office of Indian Resource  
20                  Policy operated as an agency within the Ministry of  
21                  Natural Resources and, essentially, the  
22                  responsibilities which the Office of Indian Resource  
23                  Policy had for addressing land claims devolved to the  
24                  Ontario Native Affairs Directorate at that time.

25                  Now, this was done for several different



1 reasons. One was that in the eyes of some native  
2 people there was a perceived conflict of interest with  
3 the Ministry of Natural Resources having responsibility  
4 for the stewardship of lands and resources in the  
5 Province of Ontario and also being the agency  
6 responsible for addressing native concerns for those  
7 areas.

8 And so one way of resolving that  
9 perceived conflict of interest - and I won't pass  
10 judgment on whether or not there was an actual conflict  
11 of interest - but at least as a way of addressing that  
12 perception, the responsibility for addressing land  
13 claims devolved to Ontario Native Affairs Directorate.

14 The change also took place, I think,  
15 because the Ontario Native Affairs Directorate was  
16 taking, in general, a more prominent role and this was  
17 a way to feed that prominence, because I think it was a  
18 corporate view of the government that it was  
19 appropriate for the Ontario Native Affairs Directorate  
20 to take a more prominent role.

21 And, finally, there was a view that,  
22 within the Ministry of Natural Resources, native issues  
23 had often been funneled into a single agency within the  
24 Ministry, that is the office of Indian Resource Policy  
25 and that it was more appropriate for native issues to

1 be dealt with in a corporate manner throughout the  
2 Ministry and that the fabric of the Ministry's work  
3 ought to be woven through with native issues and for  
4 that reason, native issues are dealt with more by our  
5 program groups; that is, our outdoor recreation group  
6 and our lands and waters group, these are  
7 administrative program groups within the Ministry, and  
8 our forest resources group and also throughout our  
9 field agencies. So the attempt was to decentralize  
10 native initiatives in the Ministry of Natural  
11 Resources.

12 And getting back to my position, because  
13 the Office of Indian Resource Policy was no longer  
14 functioning, there was a need for a person to play a  
15 coordinating role within the Ministry of Natural  
16 Resources to coordinate the various different functions  
17 throughout the Ministry as they related to native  
18 issues and I was chosen to play that role.

19 Q. Is there any relationship or on-going  
20 working relationship between the Ontario Native Affairs  
21 Directorate and the Ministry of Natural Resources?

22 A. Yes. I am the person who is charged  
23 with being the liaison between the Ontario Native  
24 Affairs Directorate and the Ministry of Natural  
25 Resources and we have a fairly extensive on-going

1 relationship.

2 I don't think a day goes by where I don't  
3 speak to at least one or two people from the  
4 Directorate.

5 Q. And could you advise whether my  
6 comment in my opening remarks about the approval of the  
7 Ontario Native Affairs Directorate for the contents of  
8 your paper as included in this witness statement were  
9 correct?

10 A. Yes, they were. And, in fact, staff  
11 in the Ontario Native Affairs Directorate worked with  
12 me to some extent in the preparation of those  
13 materials.

14 Q. Now, Mr. Crystal, if I could go back  
15 for one moment to your time as legal counsel within the  
16 Legal Services Branch of the Ministry. You indicated  
17 that you were involved in conducting prosecutions under  
18 legislation and dealt primarily with or largely with  
19 prosecutions of native people?

20 A. That's correct.

21 Q. And I take it that that is the  
22 reference that is made at the bottom of page 16 of the  
23 witness statement where you make reference to  
24 prosecutions under the Game and Fish Act and the  
25 Ontario Fishery Regulation?

1                   A. Yes.

2                   Q. Could you advise the Board, Mr.  
3 Crystal, whether in your view the fact that you were  
4 involved in those prosecutions should affect the weight  
5 that should be given to your evidence?

6                   A. Well, I believe that having had the  
7 opportunity to be involved in native issues, both from  
8 the perspective of a negotiator and, I suppose earlier  
9 than that as legal counsel to the negotiator, and as  
10 someone who has had the opportunity to be involved in  
11 prosecutions and litigation involving these issues, I  
12 have had, I believe, a rather unique opportunity to  
13 judge the merits of each of those means of resolving  
14 native issues and I have come to my own conclusions on  
15 whether it would be most appropriate to deal with  
16 native issues through negotiation or through  
17 prosecution and litigation and I think that my  
18 experience in conducting prosecutions has given me an  
19 insight into the native issues that I wouldn't have had  
20 otherwise.

21                   So I believe that, if anything, my  
22 credibility ought to be enhanced.

23                   Q. And could you just indicate what your  
24 view is as to the appropriate way to deal with those  
25 issues?



1                   A. Yes. After having extensive  
2                   experience, I can tell you that I certainly believe  
3                   that it is most appropriate to try to resolve those  
4                   issues through negotiation and not through prosecution  
5                   and litigation.

6                   MR. FREIDIN: Mr. Chairman, I would ask  
7                   that Mr. Crystal be designated as an expert in the area  
8                   of Ontario Government Policy concerning native people,  
9                   as well as the background relating to such policy as it  
10                  relates to programs or the programs of the Ministry of  
11                  Natural Resources.

12                 THE CHAIRMAN: Very well, he will be  
13                  qualified in those areas.

14                 Shall we swear the witnesses at this  
15                  point?

16                 MR. FREIDIN: Yes.

17                 THE CHAIRMAN: Gentlemen, would you mind  
18                  coming forward and place your hands on the Bible,  
19                  please.

20                         JOHN R.E. KENRICK,  
21                         M. MELVIN CRYSTAL, Sworn

22                 DIRECT EXAMINATION BY MR. FREIDIN:

23                 Q. Mr. Kenrick, I understand that you  
24                  are the author of the Document No. 1 to this witness  
25                  statement which is entitled Report: Ontario Overview

1       dated May the 31<sup>st</sup>, 1988?

2                   MR. KENRICK:  A.  That's correct.

3                   MR. FREIDIN:  That document commences at  
4       page 27 of the witness statement, Mr. Chairman.

5                   Q.  Can you advise, does your paper deal  
6       with the area of the undertaking only or does it deal  
7       with a larger area?

8                   MR. KENRICK:  A.  It deals with a larger  
9       area, the Province of Ontario including the area of the  
10      undertaking.

11                  Q.  Can you indicate the reason that it  
12      deals with that larger area?

13                  A.  The activities that make up the  
14      undertaking have impacts and effects outside of its  
15      physical boundary, over the whole Province of Ontario  
16      and for that reason I have elected to describe the  
17      whole province.

18                  Q.  Could you outline for the Board, Mr.  
19      Kenrick, what your evidence will deal with?

20                  A.  First of all it is an overview of the  
21      environment affected, the scope and magnitude of the  
22      undertaking at a provincial level.  It is not or will  
23      not provide a comprehensive or detailed description of  
24      Ontario's environment.  The purpose is to put our  
25      forests in a general provincial context.  Subsequent

1 panels will deal with some of the topics I am dealing  
2 with in more detail.

3 Secondly, previous evidence has provided  
4 a general description of the timber resources of the  
5 province and, to some extent, the world class nature of  
6 some of its products. What I hope to do in this report  
7 is highlight some of the other resource values which  
8 exist in the province and I believe are also world  
9 class in nature.

10 I would like to leave the impression that  
11 timber management takes place in an existing  
12 environment, which I hope to describe; there are some  
13 givens, it does not take place in isolation, factors  
14 like existing communities.

15 I would like to make the point that this  
16 is the environment within which resource managers must  
17 make decisions. For each and every resource value that  
18 exists that I will talk about, there is a group of  
19 people, stakeholders who place a priority on it.  
20 Practical solutions to many of the issues I will  
21 mention most often come in the form of integration of  
22 uses and compromise.

23 I would also like to add the point that  
24 being in that decision-making area it is more complex  
25 than just dealing with perfect data; quite often one

1 has to deal with concepts like fairness and equity,  
2 local communities.

3 While this report speaks to Ontario's  
4 forest resources and people at a provincial level, for  
5 resource management purposes we break it down into  
6 manageable areas and deal with that at different level  
7 of detail. That will be the focus of subsequent panels  
8 when they are dealing with the area of the undertaking  
9 and at a management unit level.

10 In those more detailed cases we tend to  
11 focus on those items which most directly are affected  
12 by our decisions, we tend to concentrate on those areas  
13 where the potential risk of doing harm is most  
14 apparent. In other words, there is a limit to what we  
15 can collect information on and what we expend those  
16 efforts on will be determined, to a large extent, by  
17 what the issues are and where a perception of perhaps  
18 doing harm is.

19 Q. Now, Mr. Kenrick, could you describe  
20 the approach that you have taken to this task?

21 A. Timber management takes place in both  
22 a physical and social setting, so the report is divided  
23 up roughly in half. The first portion describes the  
24 physical environment and it is described in terms of  
25 parameters such as geography, the extent of it,



1 geology, water resources, climate, other natural  
2 resources such as flora and fauna, some man-made items,  
3 infrastructure, such as roads, population centres,  
4 archaeological sites and the provincial parks system.

5 I have also, more for convenience, put  
6 the description of the people of the province,  
7 including natives, into that infrastructure section  
8 largely because the infrastructure tends to be  
9 concentrated where the people are and it is more  
10 convenient to deal with the two in one item.

11 The second portion of the report deals  
12 with the social, economic and cultural environment  
13 which can be described by describing the people and  
14 their uses of that physical environment. In this case,  
15 we are referring to those peoples as stakeholders; in  
16 many cases stakeholders who are dependent on the forest  
17 for their well-being.

18 When I am dealing with the social  
19 environment I will also describe the distribution of  
20 uses, some of the values that are put on those  
21 resources, some of the issues that are brought to our  
22 attention and how we maintain contact with a number of  
23 groups. The stakeholders themselves, to sort out the  
24 groups, will be discussed under a heading such as  
25 commercial and recreational stakeholders, as well as

1 community, traditional and general public stakeholders.

2 Q. I understand that you are actually --  
3 when we go to your report that those areas are broken  
4 into four areas: Commercial stakeholders being one,  
5 recreational stakeholders being one, local and  
6 traditional users being another, and the general public  
7 being the fourth group of stakeholders; is that  
8 correct?

9 A. That's correct.

10 Q. Now, the first part of the report,  
11 Mr. Kenrick, dealing with the physical environment I  
12 believe commences on page 40 where you begin by  
13 describing the location and extent of Ontario and the  
14 area of the undertaking and perhaps you could provide  
15 an overview of your evidence or of your witness  
16 statement in relation to that particular topic?

17 A. Sure. With the Board's pleasure I  
18 would like to turn on the projector and use some  
19 slides. The first slide, and this is -- it is Figure 1  
20 in the witness statement. Perhaps it is easier to look  
21 here.

22 Q. Page 41.

23 A. Page 41. Shows the 106-million  
24 hectares in the Province of Ontario. The boundary of  
25 the undertaking is shown in a black line on the

1 provincial outline there.

2 In the European context we are talking  
3 about a piece of real estate that stretches  
4 approximately from Sweden to the Mediterranean, covers  
5 15 degrees of latitude, the middle 6 degrees of  
6 latitude roughly are the areas of the undertaking.

7 Another way of describing the extent of  
8 Ontario and the undertaking is to look at the province  
9 in a North American context.

10 On a west coast setting, for instance,  
11 Ontario stretches approximately from California to the  
12 Alaska Panhandle, the 49th parallel which is most  
13 commonly used, the southern boundary of Canada across  
14 most of the west, in fact, runs through the Town of  
15 Cochrane, just south of the Town of Cochrane in  
16 northern Ontario.

17 The distance from Moosonee, a community  
18 on the south tip of James Bay, to Toronto is the same  
19 distance as it is from Moosonee to the northern point  
20 on the province there at the Penn Islands.

21 Ontario is the second largest province in  
22 the country, it is twice as large as all of the maritime  
23 provinces put together. All of the administrative  
24 districts that are inside the area of the undertaking,  
25 but for two, are larger than the province of Prince

1 Edward Island.

2 Q. And I understand that that particular  
3 size had something to play in terms of how management  
4 of natural resources would be dealt with by the  
5 Ministry; is that correct?

6 A. That's correct.

7 Q. And could you explain what that  
8 size -- how that size played a part in that particular  
9 decision?

10 A. The relevance of that information is  
11 twofold. Because of the size of Ontario, it is logical  
12 to break it up into management units for the purpose of  
13 timber management planning. Also because of the size  
14 of Ontario many of our residents - and I will get into  
15 this a little later - are unfamiliar with the  
16 geographic and vegetative differences between where  
17 they live, which is largely in the south and where the  
18 undertaking takes place, which is, to a large extent,  
19 in the near north and northern Ontario.

20 That has led, in my opinion, to some lack  
21 of understanding about the undertaking and I think some  
22 of them were discussed previously; the myths, the  
23 destructive nature of forestry.

24 I think part of that myth, and I believe  
25 it is a myth, can be explained by the fact that our



1 land base and people are in two different areas, to a  
2 large extent.

3 THE CHAIRMAN: Mr. Freidin, can we  
4 interrupt you here and ask you to see if you can put  
5 these lights on so it makes it easier for us to see our  
6 notes?

7 MR. FREIDIN: Sure. Do you want me to  
8 continue and...

9 THE CHAIRMAN: Yes, please.

10 MR. FREIDIN: Q. All right. Perhaps you  
11 could just then continue, Mr. Kenrick.

12 MR. KENRICK: A. I would like to go on  
13 and illustrate some other ways of describing the area  
14 of the undertaking.

15 This is Figure 3 which is on page 44 of  
16 the witness statement. It shows the boundary relative  
17 to the area of the Province of Ontario. The northern  
18 limit of that boundary, the north boundary of the green  
19 is the limit of commercial forestry operations. The  
20 southern boundary is the limit of forests on the Crown  
21 land in the Province of Ontario. Between those  
22 boundaries there are approximately 465,000 square  
23 kilometres.

24 Yet another way of expressing the size  
25 and area of the undertaking is in this figure, again a

1 repeat of 4.2 in the document on page 47. The circle  
2 in its entirety represents all of Ontario at just over  
3 a million square kilometres, one hundred per cent of  
4 the province. Area B in the diagram is the area that's  
5 inside the physical boundaries of the undertaking but  
6 not subject to the undertaking; in other words, other  
7 than Ownership 1 which Mr. Osborn talked about, and  
8 that accounts for about 8 per cent of the Province of  
9 Ontario.

10 Q. I understand that the particular  
11 breakdown by percentages is actually contained on page  
12 47 of the witness statement, it just hasn't been  
13 produced on this overhead; is that correct?

14 A. That's correct.

15 Q. Okay.

16 A. The area shown as C in yellow on that  
17 diagram is the area inside the geographic boundary of  
18 the undertaking and is Ownership 1, so it is the area  
19 subject to the undertaking. And that makes up 385,000  
20 square kilometres, or 36 per cent of the Province of  
21 Ontario.

22 This Figure 4.3 which is taken from page  
23 48 of the witness statement, the Area A is the same as  
24 Area A on the last exhibit, it is the area outside the  
25 undertaking and B is similar to the last one, the area

1 within the area of the undertaking but not subject to  
2 it, other ownerships.

3 D, E, F and G, as a percentage of the  
4 area of the Province of Ontario, are shown. Area D is  
5 production forest, the area within the undertaking and  
6 that comprises 25.4 per cent of the province, the  
7 largest portion.

8 Protection forest as defined by Mr.  
9 Osborn, again within the area of the undertaking,  
10 amounts to 14,000 square kilometres or 1.3 per cent of  
11 the province. Non-productive land within the area of  
12 the undertaking amounts to 40,000 square kilometres or  
13 3.7 per cent of Ontario and water subject to the  
14 undertaking accounts for 62,000 square kilometres or  
15 5.8 per cent of the province.

16 Q. Mr. Kenrick, on page 48 in relation  
17 to all of those items D through G, they are described  
18 as - and I will use protection forest as an example -  
19 it says: Protection forest; subject to undertaking.  
20 What does that mean, subject to undertaking?

21 A. Within the area of the undertaking.  
22 Within would probably be a more appropriate word there.

23 Q. Thank you.

24 A. That diagram showed some sizes of the  
25 undertaking relative to the Province of Ontario in

1 total. The next figure, Figure 5 describes that same  
2 area of the undertaking which shows the relative  
3 percentages as a percentage of the undertaking itself.

4 Area B, at the top of that production  
5 forest which is made up of production forest and  
6 production forest reserve, accounts or 57.8 per cent of  
7 the area of the undertaking. Protection forest  
8 accounts for 3.1 per cent, non-productive accounts for  
9 8.6 per cent of the area of the undertaking, these are  
10 all Ownership 1, and water accounts for 13.3 per cent  
11 of the area of the undertaking.

12 The other ownerships not subject to the  
13 undertaking are 17.2 per cent of area. That is shown  
14 as F on that diagram.

15 Just by comparison, the annual harvest at  
16 about 2,000 square kilometres is .4 per cent of the  
17 total area that's within the outside boundary of the  
18 undertaking and it is about .7 per cent of production  
19 forest. In that case, .7 per cent of the area shown as  
20 B.

21 Q. I understand, Mr. Kenrick, that an  
22 approximation of the area of productive forest for  
23 timber management operations, not just harvest but all  
24 timber management operations may be carried out at any  
25 time as been made, an approximation of that has been



1       made; is that correct?

2                   A.   That's correct.

3                   Q.   And can you advise what the  
4       approximation is?

5                   A.   The area that is affected by timber  
6       management at any point in time, I've quoted it in a  
7       very general sense, as being about 5 per cent of the  
8       area in productive forest. To arrive at that what we  
9       have considered is the area that in any one year is  
10      being harvested, the area that is being accessed for  
11      subsequent years harvesting, area that is under renewal  
12      operations both past -- as a result of past year's  
13      harvest and that year's harvest or under maintenance.  
14      Again, it is a very general figure.

15                  The size of the harvest itself, I quoted  
16      previously is .7 per cent. So get to the 5 per cent  
17      there has been some general figures and they have also  
18      been added for several years to reflect the fact that  
19      the direct impact of the activities of access, harvest,  
20      renewal and maintenance have a tendency to be there for  
21      a few years, at least the immediate effects.

22                  Q.   Okay. I believe Figure 6 is  
23      something similar to what we saw in Panel No. 2 and Mr.  
24      Armson gave his evidence about the history of timber  
25      management. Perhaps you can just briefly deal with

1       that particular figure in the document?

2                   A.   Sure.  This map here showed, and it  
3       is Figure 6 off page 52 of the witness statement, shows  
4       the major geographic regions of Ontario.

5                   There is a high correlation on that  
6       between the tundra -- the boundaries of the area of the  
7       undertaking and the area shown as tundra at the north  
8       part of the map, the pink.

9                   Tundra comprises about 23 per cent of the  
10      province.  The forested area, which is green on this  
11      map, comprises about 5 per cent of the province.  The  
12      agricultural areas, yellow, largely in southern Ontario  
13      but through the clay belt type areas in the north  
14      comprises about 10 per cent of the province, largely  
15      private land and the Great Lakes comprise the other 9  
16      per cent.

17                  Q.  Now, could you highlight the next  
18      three sections of your report Mr. Kenrick, and I  
19      understand that those three sections describe the land  
20      resource, the water resources of the province, and the  
21      climatic variation across the area of the undertaking.

22                  A.  That's correct.  And I will also  
23      outline, to some extent, the significance of the things  
24      I am describing and its effect on forest management.

25                  If I could direct your attention to what

1 was Figure 7 on page 54 of the witness statement.

2 Bedrock geology units of the Province of Ontario.

3 Again, note the high correlation between the boundaries  
4 of the undertaking and some of the colour differences  
5 on this map.

6 The pink colour, that correlates very  
7 closely to the undertaking is the Precambrian shield  
8 area of the province, broken in moderately broken  
9 uplands. To the north and south of that are flat lying  
10 younger Paleozoic rocks in the north forming most of  
11 the Hudson Bay lowlands and in the south most of  
12 southern Ontario.

13 A surficial geology map of the province,  
14 the story of our soils illustrates a few things.  
15 Again, note the correlation, to some extent, between  
16 the boundary of the orange, which is noted there as  
17 thin undifferentiated material and bedrock. I would  
18 just like to make the comment that that thin is a very  
19 relative term the way it is used here. In the areas  
20 that have had significant glacial activity, thin is  
21 relative in terms of a couple of metres, zero to a  
22 couple of metres of soil.

23 When you are dealing with soil depths in  
24 what is brown on that map, which is the silts and  
25 clays, the results of post-glacial lakes, you are

1       probably dealing with soils that in some cases are  
2       hundreds of metres thick. Again, it is only a relative  
3       term.

4                       I just highlight. The orange is -- or  
5       sorry, the yellow is sands and gravels, the product of  
6       eskers and morains. The brown are the silts and clay  
7       soils in the province, generally thick - the clay belt,  
8       you will notice, shows up in the northeast portion of  
9       the undertaking.

10                      Q. Could you just indicate where on that  
11       particular figure the clay belt is. Do you have a  
12       light pointer?

13                      A. That doesn't work, not with the  
14       lights on in this room. The clay belt would be -- the  
15       great clay belt would be in here.

16                      THE CHAIRMAN: Excuse me sir, you will  
17       have to speak up.

18                      MR. KENRICK: The great clay belt would  
19       be here, northeastern Ontario, with a little clay belt  
20       in the area of the New Liskard and Englehart being down  
21       here. (indicating)

22                      MR. FREIDIN: Q. And can you just  
23       point -- where is Timmins?

24                      MR. KENRICK: A. About there.  
25       (indicating)



1                   Q. It is in the middle -- approximately  
2                   in the middle of the area that you just referred to?

3                   A. More or less. The other feature that  
4                   is shown there, but there is not much of it, is an area  
5                   that is undifferentiated bedrock, the absence of soil.  
6                   There are some very small areas, for instance, on the  
7                   north shore of Lake Superior.

8                   The relevance of that information, as  
9                   described in some of the earlier evidence, the forests  
10                  of Ontario are divided into broad forest regions:  
11                  boreal, Great Lakes/St. Lawrence and deciduous. At the  
12                  local level these can be further subdivided into site  
13                  types and eventually forest stands.

14                  Many of these subdivisions are responses  
15                  to the types of soil variation that are shown on that  
16                  figure; the complex pattern of soil types and bedrock  
17                  influences, to some extent, the type of forest growing;  
18                  it determines, to some extent, the location of gravel  
19                  for road building; and, to some extent, influences the  
20                  method of harvesting such as the use of high-flotation  
21                  tires.

22                  Two points perhaps could also be brought  
23                  out on that map. Agriculture and mining, I am going to  
24                  be discussing both of them a little later, but note  
25                  that most agriculture in both the north and the south

1 takes place in the areas of thick deposits, of clay  
2 silts and sands. Most of the mining in the province,  
3 particularly metallic, takes place in the Precambrian  
4 areas often where bedrock is not extensively covered by  
5 soils.

6 Q. The Precambrian area then being the  
7 orange on that particular figure?

8 A. Actually on the previous map, but the  
9 correlation between the orange on this and the  
10 Precambrian on the previous one is quite close.

11 Q. Okay.

12 A. I would like to speak about the water  
13 resources briefly of the province. Ontario is blessed  
14 with one of the largest fresh water resources of any  
15 jurisdiction in the world. Water covers about 180,000  
16 square kilometres of Ontario or about 17 per cent of  
17 its land mass. For comparison purposes, water covers  
18 about 8 per cent of the rest of Canada.

19 Figure 9 shows the five major drainage  
20 basins and watersheds in the province. These main  
21 watersheds can, in turn, be divided into 28 secondary  
22 watersheds, then into 144 tertiary watersheds,  
23 eventually into over 2,000 watershed units.

24 71 per cent of Ontario drains into James  
25 and Hudson Bay including the Nelson River River

1 watershed. 29 per cent drains into the Great Lakes.

2 Two other points I think this map will  
3 bring out. If you look at the area of blue and the  
4 northern boundary of the undertaking, that is largely  
5 the area of Nishnawbe-Aski Nation Treaty 9.

6 Q. Which area are you referring to?

7 A. The James Bay -- Hudson Bay/James Bay  
8 Basin, the blue area south of the boundary of the  
9 undertaking.

10 It seems the other point to bring out  
11 here, if you recall Mr. Armson's discussion about the  
12 history of forestry, its history started out in the  
13 Lake Erie/Lake Ontario basins, thence up the Ottawa  
14 River Basin, a lot of it in response to the watering  
15 logs, then through the Lake Superior, Lake Huron Basin  
16 and eventually, with the advent of road and rail  
17 system, into the Hudson and James Bay and Nelson River  
18 Basin.

19 Q. Just before we leave that, you  
20 indicated that the blue area corresponded fairly  
21 closely with the area of Nishnawbe-Aski Nation. What  
22 is it about the boundary that makes you say that?

23 A. That is the area north of the Hudson  
24 Bay height of land, the area previously owned, if you  
25 will, by the Hudson Bay Company, the arctic watershed.

1                   Q. All right. And so that the area then  
2 in blue, the rivers drain towards Hudson Bay; is that  
3 correct?

4                   A. That's correct.

5                   Q. Thank you.

6                   A. I would like to make the point that  
7 water is the focus of much of our history and many our  
8 present day activities. Most of our residential areas  
9 today are adjacent to water. Much of our recreation  
10 occurs there and most often, that is the interface  
11 between timber operations and other users of the  
12 forest. Generally if there is conflict between users  
13 it is adjacent to water.

14                   I would like to speak briefly about our  
15 lakes. There are 227,000 lakes in the province. They  
16 are not evenly distributed. By referring back to the  
17 figure that's still up, 8 per cent of our lakes are in  
18 the Hudson Bay Basin. Now, the Nelson River Basin  
19 which is the red in northwestern Ontario has 18 per  
20 cent of its surface area covered by water.

21                   Excluding the Great Lakes, 6 per cent of  
22 the St. Lawrence Basin is covered by lakes. One of the  
23 implications with this is the large amount of water  
24 that is in northwestern Ontario accounts for much of  
25 its recreational attraction and some of the figures on



1 hunting and fishing and park use that I will show a  
2 little later will reflect that.

3 It also tends to complicate, if you will,  
4 the planning of both roads and timber harvesting in  
5 that area of the province. Our lakes vary by size.  
6 The four largest ones are the Great Lakes, the next  
7 four largest lakes are all within the area of the  
8 undertaking: Lake Nipigon, Lake of the Woods, Lac Seul  
9 and Lake Nipissing.

10 Only another 900 lakes are larger than  
11 ten square kilometres, 9,800 lakes are between one and  
12 ten square kilometres, and the very vast majority of  
13 our lakes, 216,000 of them, are less than one square  
14 kilometre.

15 Some general observations about our  
16 rivers and streams. Southward flowing rivers tend to  
17 be shorter and swifter than northward flowing ones.  
18 River flows tend to be greatest in the melting seasons  
19 of April, May and June, and flows least during the  
20 summer and fall in the south and in the winter in the  
21 far north.

22 Seasonal flows vary widely. Because the  
23 Great Lakes system acts to some extent as a natural  
24 reservoir, an efficient reservoir, spring flood flows  
25 at Niagara Falls of two to three times greater than the

1 low flow in the summer. By contrast, the absence of  
2 lakes acting as reservoirs over much of the Albany  
3 River system in the north results in spring flows up to  
4 90 times the low flow summer rates.

5 Ground water storage areas or aquifers  
6 can occur in either bedrock or overburden. Because of  
7 the lack of porosity and permeability in the  
8 Precambrian rocks of the area of the undertaking, there  
9 are no known major aquifers. Bedrock aquifers are  
10 generally associated with the Paleozoic rocks in  
11 southern Ontario, the Oak Ridges Marine, those types of  
12 features.

13 The same conclusion is also true for  
14 ground water and overburden. Because of the absence of  
15 large areas of overburden in the Precambrian area,  
16 aquifers are scarce and generally small. Because of  
17 the abundance of surface water in the area of the  
18 undertaking demand for ground water from sand and  
19 gravel deposits is also small.

20 Where aquifers are known to exist in the  
21 Precambrian area they are generally adjacent to  
22 municipalities, Cochrane and a portion of Timmins, for  
23 instance, get their water source out of aquifers.

24 In summary, the water section -- our  
25 forest and the timber management practices, I believe,

1 are responsive to the water resources of the province.  
2 Other witness will deal with such topics as hydrology  
3 as it affects forest growth in Panel 9, harvesting  
4 adjacent to lakes in Panel 10, water crossings in Panel  
5 13, and road planning in Panels 13 and 15.

6 Q. I understand in the next section, Mr.  
7 Kenrick, under climatic variation you have a picture of  
8 the boreal forest in winter which I understand is  
9 something that the Board wants to see first hand.

10 Do you have that particular slide?

11 A. Yes. Just a brief description about  
12 climatic variation leading to that. On this map here,  
13 which shows mean annual precipitation.

14 Q. Excuse me, No. 10 page 61?

15 A. Page 61. Mean annual precipitation  
16 including rain and snow in northwestern Ontario  
17 averages about 600 millimetres. It is more than twice  
18 that east of Lake Superior. To some extent that  
19 explains the larger fire losses in the northwestern  
20 portion of the province.

21 Snowfall is less than 200 centimetres in  
22 the northwest portion of the province and greater than  
23 200 centimetres in the clay belt and that has some  
24 effects on winter logging practices.

25 Land and water...

1                   Q. Could you explain what those -- just  
2                   generally what effects they do have?

3                   A. Types of equipment used, the timing  
4                   of winter hauls, the use and extent of winter roads.  
5                   That's also related to the fact that the land and the  
6                   water is frozen for about three and a half months in  
7                   the southern portion of the undertaking and up to six  
8                   months in the northern portion of the undertaking.

9                   To illustrate some of that variation I  
10                  have chosen two slides just to give a summary. This is  
11                  winter cold boreal forest near Timmins, and a scene  
12                  from the Great Lakes/St. Lawrence forest around  
13                  Braceridge.

14                 MR. FREIDIN: Mr. Chairman, all the sides  
15                 that are being put up are reproduced in the witness  
16                 statement. We have cut out quite a number of slides  
17                 because it probably was not necessary to show some of  
18                 them.

19                 If the Board wishes, I can - not right  
20                 now - but perhaps at the end of the day advise which  
21                 particular photographs in the witness statement were  
22                 actually presented during the presentation, if that  
23                 would be of assistance.

24                 THE CHAIRMAN: Very well.

25                 MR. FREIDIN: Q. The next section of the



1 report, Mr. Kenrick, deals with the flora and the  
2 wildlife. I understand that Panel No. 7 are going to  
3 be basically dealing with this topic in quite a bit  
4 more detail than you are; is that correct?

5 MR. KENRICK: A. That's correct, I am  
6 providing an overview.

7 Q. All right. And could you then,  
8 through reference to your report, provide that  
9 overview, and perhaps before you do that...

10 MR. FREIDIN: Mr. Chairman, if I could  
11 provide you with a new copy of Figure No. 11 which  
12 appears on page 63. The new figure actually was  
13 included in an answer to an interrogatory from the  
14 Canadian Environmental Law Association, Interrogatory  
15 No. 4.

16 I would like to file the answer to the  
17 interrogatory as well, so perhaps we could do that at  
18 this time.

19 THE CHAIRMAN: Okay.

20 MR. FREIDIN: (handed)

21 THE CHAIRMAN: We will mark this as  
22 Exhibit No. 210.

23 ---EXHIBIT NO. 210: Interrogatory Question No. 4 posed  
24 by CELA.

25 MR. FREIDIN: Q. Okay, Mr. Kenrick,

1 perhaps you could then give an overview then of the  
2 flora and wildlife resources of the province?

3 MR. KENRICK: A. I would briefly like to  
4 talk about the flora resources first of all. There are  
5 over 2,000 species is of vascular plants in the  
6 Ontario.

7 Q. What is a vascular plant?

8 A. Plants that have an internal  
9 transport system for water and nutrient; arteries if  
10 you will.

11 Q. I understand that is information that  
12 you obtained from a biologist within the Ministry of  
13 Natural Resources?

14 A. Yes.

15 Q. I understand -- just so we are clear  
16 on this, Mr. Kenrick, I understand that you are not an  
17 expert in relation to each of the scientific  
18 disciplines that you are giving a general overview of;  
19 is that correct?

20 A. That's correct.

21 Q. All right.

22 A. Of those 2,000 species the most  
23 up-to-date and accurate treatment of rare native plants  
24 in Ontario has been in 19 -- was developed in 1982-88.  
25 Atlas of Rare Vascular Plants in the Province by the

1 National Museum of Natural Science, Botany Division.

2 This was the first atlas of its type in  
3 North America. In 1977 a preliminary list of rare  
4 plants, some 600 species or about a third of the native  
5 flora in the province was published by the National  
6 Museum. Subsequent to this professional and studen  
7 botanists, government museum academic individuals  
8 undertook a species-by-species review of some 940  
9 native species.

10 Of these, 542 have been described in that  
11 study as being rare and will be dealt with individually  
12 in that atlas. Now, 542 out of the 2,000.

13 Q. I understand that later in your  
14 evidence you are going to be giving some numbers in  
15 relation to rare and endangered animals and rare is one  
16 of the categories which is used.

17 Are you able to advise whether the  
18 category of rare that is going to be used there also  
19 applies to this particular category of flora?

20 A. Yes, the definition is precisely the  
21 same. I will mention that just a little later, the  
22 definition. The definition of rare is the same.

23 Of those 542 species, the majority of  
24 them are carolinian and sub-arctic, in other words, in  
25 the southern extremes of the province or the northern

1 extremes. Numerous others are species in specialized  
2 habitats such as the Great Lakes shoreline, prairies,  
3 open acid wetlands and aquatic habitats. Relatively  
4 few are species of forest habitats in the area of the  
5 undertaking.

6 A number of those 542 species, 155 are  
7 known to occur within the area of the undertaking, with  
8 the proviso that some of them occur in types of  
9 habitats such as aquatic that are not normally affected  
10 by forestry.

11 Q. Now, I understand that the next part  
12 of your report, which includes Figure 11, is in fact  
13 the part of the evidence which you just supplemented  
14 with the Interrogatory No. 4 asked by the Canadian  
15 Environmental Law Association; is that correct?

16 A. That's correct.

17 Q. All right. And could you then deal  
18 with that particular figure, that new figure and  
19 perhaps outline the added information which has been  
20 provided in relation again to animals, fur bearers and  
21 game birds which was in fact part of the subject matter  
22 dealt with in that interrogatory?

23 A. Yes. This figure is drawn from  
24 Figure 11 on page 63. It is an updated figure and I  
25 have to apologize, there is still one error in it and I



1 will address it. Number of mammals - imposes going to  
2 speak to the column under the Province of Ontario,  
3 Panel 7 will deal with those species that are specific  
4 to the area of the undertaking.

5 Number of mammals in the province is  
6 shown as 71 there. Non-game mammals account for 36  
7 species, game animals account for 11 species, and fur  
8 bearers originally accounted for 24 and now account for  
9 25. There was an error wolverine was left off our list  
10 which now makes a total number of mammals in Ontario at  
11 72.

12 Q. Now, before you continue, I  
13 understand that game animals or game birds have both a  
14 legal definition and they also have certain definitions  
15 which you have described as layman's definitions.  
16 Could you indicate to the Board what the difference  
17 between the two are?

18 A. Certainly. The Game and Fish Act  
19 defines a game animal as any animal except a fur bearer  
20 protected by the Act. Game birds similarly are any  
21 bird protected by the Game and Fish Act or the  
22 Migratory Birds Convention Act.

23 Q. Those are the legal definitions.

24 A. Those are the legal definitions.  
25 Generally they refer to animals and birds that can be

1       hunted. The reason for using that simplified  
2       definition, for instance, is on the list that were  
3       provided in response to Question 4 from CELA, you will  
4       notice that polar bear shows up under fur bearers and  
5       not a game animal. Well, in fact it is a game animal  
6       by legislation, it is fur bearer by regulation.

7                       So to get rid of the double counting in  
8       there, it has been included on one list and not both  
9       lists. For that reason I would describe the list that  
10      we generated here as being layman's and generally refer  
11      to those species that can be hunted as opposed to the  
12      legal definition.

13                     Q. So the breakdown then on the  
14      Interrogatory No. 4 the, answer to 4A, the reference to  
15      game animals is in fact a list using the layman's  
16      definition?

17                     A. That's correct.

18                     Q. And if we turn over to page 3 of that  
19      interrogatory there is a listing of Ontario game birds  
20      species. Can you advise, is that list based on the  
21      legal or the layman definition?

22                     A. Again, game bird - and those are  
23      species that are primarily breeding and hunted whose  
24      harvest is regulated under the Game and Fish Act or the  
25      Migratory Birds Convention Act. You will note there is

1 an illustration there, the brant goose, for instance,  
2 is hunted to a fair extent in the Province of Ontario  
3 but is not on that list because it isn't known to breed  
4 in Ontario.

5 Q. All right. But that list, there you  
6 have put there Ontario game birds, is that a list of  
7 those game birds which are game birds by legal  
8 definition or are these game birds which, by the  
9 layman's terms, which I understand to be birds which  
10 are hunted?

11 A. The layman's definition. The two  
12 don't differ very much though.

13 Q. Okay.

14 A. If I might go on with the exhibit  
15 here. Birds: 286 breeding species in the province and  
16 the source of that was the FON Federation of Ontario  
17 Naturalists 1984 checklist. There are - I will mention  
18 it - other estimates. The Bird Breeding Atlas of  
19 Ontario currently list 294. We are aware of the  
20 difference. We can have debates about species and  
21 sub-species and one attempt of nesting site in Ontario  
22 but generally the number is about 286.

23 If you include those birds that not only  
24 breed in Ontario but those that also migrate through  
25 the Federation of Ontario Naturalists '84 checklist

1 illustrates 427 species.

2 The numbers of reptiles present in the  
3 province, and that source is the non-game species  
4 program list from the Ministry which I think is  
5 reference 15, numbers 29 and amphibian 24.

6 Q. What are the amphibian?

7 A. Generally members of the family  
8 amphibia. They can live in land and water and have the  
9 ability to breath in both mediums. Layman's terms  
10 again they are between fish and reptile, if you will.  
11 Generally frogs, toads and newts.

12 Q. In relation to fur bearers, you  
13 indicated that you have got numbers in Figure 11 for  
14 fur bearers. Is there both a legal and a layman  
15 definition of fur bearers?

16 A. That's correct. The legal definition  
17 in the Game and Fish Act is -- a fur bearer listed in  
18 the Act or declared by the Lieutenant  
19 Governor-in-Council. In layman's terms it is generally  
20 those animals whose pelt can be sold.

21 Q. And which definition was used when  
22 you prepared the list of fur bearers in answer 4A to  
23 CELA's Interrogatory?

24 A. The layman's.

25 THE CHAIRMAN: Mr. Freidin, it is after



1 2:30. I think I will take an afternoon break. Is this  
2 a convenient time?

3 MR. FREIDIN: Yes.

4 THE CHAIRMAN: Very well. We will break  
5 for 20 minutes.

6 Thank you.

7 ---Recess taken at 2:35 p.m.

8 ---Upon resuming at 3:00 p.m.

9 THE CHAIRMAN: Thank you. Be seated.  
10 please.

11 MR. FREIDIN: Q. Mr. Kenrick, the slide  
12 that you have up now is Figure No. 14 found on page 68  
13 indicating the wildlife management units in Ontario?

14 MR. KENRICK: A. That's correct.

15 Just a point of explanation. The concept  
16 of wildlife management units will come up in subsequent  
17 panels but, generally, game animals and game birds are  
18 managed through a system of these 95 wildlife  
19 management units, largely for the basis of season  
20 regulation.

21 These units represent portions of  
22 different habitat types and have been altered to some  
23 extent, generalized to also, wherever possible, follow  
24 visible and man-made boundaries; railway tracks,  
25 rivers.

1 Q. Now, I understand that the last part  
2 of your evidence in relation to wildlife, before you  
3 get into fisheries, deals with the Endangered Species  
4 Act and the classification of the various species into  
5 a number of different categories; is that correct?

6 A. That's correct.

7 Q. And could you advise, is there a  
8 particular group or committee that becomes involved in  
9 designating certain species into certain categories?

10 A. Yes, there is. There are several  
11 groups, but I will make reference to the Committee on  
12 the Status of Endangered Wildlife in Canada, COSEWIC.

13 Q. And that committee is referred to on  
14 page 69 of the evidence?

15 A. That's correct.

16 Q. Can you advise what COSEWIC is, this  
17 Committee on the Status of Endangered Wildlife?

18 A. Yes, just to back up one small step.  
19 In cooperation with various groups, clubs, museums,  
20 universities we have joined programs to monitor and  
21 track the relative abundance and health of many of the  
22 plant and animal species in the province.

23 The Ministry sit on one such group,  
24 COSEWIC, the Committee on the Status of Endangered  
25 Wildlife in Canada, and that group considers

1 information about species in jeopardy from the most  
2 reliable sources available and the signs of status are  
3 either rare, threatened, endangered, extirpated or  
4 extinct.

5 Before going on to provide those  
6 definitions, that particular committee, COSEWIC, is a  
7 national committee, it has members from all of the  
8 provinces and the territories, the Federal Government,  
9 the World Wildlife Fund, Canadian Nature Federation,  
10 Canadian Wildlife Federation. Their role is to make  
11 status recommendations to be considered by the member  
12 jurisdictions including Ontario.

13 Just to proceed through the categories,  
14 that COSEWIC has assigned: Rare, threatened,  
15 endangered, extirpated and extinct.

16 MR. FREIDIN: Perhaps before we do that.  
17 Mr. Chairman, there were a series of interrogatories  
18 asked by the Ministry of the Environment who wanted to  
19 have an identification of the species that fell into  
20 each classification and they wanted an explanation as  
21 to the reasons for the species failing in one category  
22 or another.

23 I thought that information would be  
24 useful to the Board. I have already made copies of the  
25 interrogatories that I refer to available to other

1 people. They are MOE interrogatories 6, 7, 8, and 9  
2 which deal with the classifications of threatened  
3 species, endangered species, extirpated species, and  
4 extinct species respectively. (handed)

5 THE CHAIRMAN: Very well. We will mark  
6 these as Exhibit 211.

7 ---EXHIBIT NO. 211: MOE Interrogatory Nos. 6, 7, 8,  
8 and 9.

9 MR. FREIDIN: Q. Now, Mr. Kenrick, I  
10 understand that although these answers in fact identify  
11 the reasons for the particular species falling into one  
12 classification or another, that you are not able to  
13 really deal with that particular portion of the  
14 answers; is that correct?

15 MR. KENRICK: A. That's correct.

16 Q. There will be witnesses with the  
17 expertise to deal with that particular matter in Panel  
18 No. 7?

19 A. Panel 7.

20 Q. All right. But could you then, in a  
21 general sense, then advise the Board what these various  
22 categories are and, perhaps with reference to the  
23 interrogatories, provide the Board with some sense of  
24 how many species we are talking about and what species  
25 they are?



1                   A. Right. Rare species is the first  
2 category and it is any indigenous meaning native  
3 species of flora and fauna which is represented in  
4 Ontario by small but relatively stable populations  
5 and/or which occur sporadically or in very restricted  
6 areas of Ontario, or at the fringe of its range. In a  
7 simpler sense these species can be rare in Ontario but  
8 vigorous and numerous elsewhere.

9                   Of the species, rare species in Ontario:  
10 6 birds, 2 mammals, 2 reptiles, a plant are known to  
11 occur in the area of the undertaking.

12                  MR. FREIDIN: And perhaps, Mr. Chairman,  
13 we have a list -- I will prepare a list of those which  
14 we can probably attach to the document which was just  
15 marked as an exhibit so you have a complete list. That  
16 just wasn't one of the areas that MOE asked for.

17                  THE CHAIRMAN: Okay.

18                  MR. KENRICK: If you wish, I can list  
19 them, but that's --

20                  THE CHAIRMAN: Well, you might as well  
21 leave them for your putting the list in at the  
22 appropriate time.

23                  MR. FREIDIN: Yes, I think it would be  
24 just as easy to file that as an addition to the  
25 exhibit.

1 MR. KENRICK: The next category is that  
2 of threatened species and they are any indigenous  
3 species of fauna or flora which on the basis of the  
4 best available scientific evidence is indicated to be  
5 experiencing a definite non-cyclical decline throughout  
6 all or a major portion of its Ontario range and which  
7 is likely to become an endangered species if the  
8 factors responsible for the decline continue unabated.

9 MR. FREIDIN: Q. And there is a list of  
10 the threatened species in Exhibit No. 211?

11 MR. KENRICK: A. That's correct. Within  
12 the area of the undertaking there are 2 birds and one  
13 reptile.

14 Q. And am I correct, Mr. Kenrick, that  
15 one of the characteristics that each of these species  
16 has is that they are indigenous species, indigenous to  
17 Ontario before they can fall into the category?

18 A. That's correct.

19 Q. One or the other of the categories?

20 A. That is correct.

21 Q. All right.

22 A. Endangered species would be the third  
23 category and they are any indigenous species of flora  
24 or fauna which on the best available scientific  
25 evidence is indicated to be threatened with immediate

1 extinction throughout all or a significant portion of  
2 its Ontario range.

3 Within the area of the undertaking: 1  
4 mammal, 6 birds, one plant and one insect are known to  
5 occur in the area of the undertaking.

6 Q. And again that is dealt with in  
7 Question No. 7 of the Ministry of the Environment?

8 A. That's correct.

9 Q. Can you advise, there is reference in  
10 the material to the Endangered Species Act. Are you  
11 aware as to whether all the species on the COSEWIC  
12 endangered species lists are protected by the  
13 Endangered Species Act?

14 A. No, they are not. Just as an  
15 illustration here. The aurora trout, for instance, is  
16 listed as an endangered species but is not designated  
17 under the Act. In that specific case, for a couple of  
18 reasons; one the Ministry doesn't view it as a separate  
19 species but rather a color variant of brook trout and,  
20 for that reason, it wouldn't be under the Endangered  
21 Species Act.

22 And, secondly, we have great hopes that  
23 it as being rehabilitated at the current time so it  
24 would be a matter of putting it on the list only,  
25 hopefully to pull it off the list in the near future.

1 Q. Okay.

2 A. Extirpated species is the next  
3 category and they are indigenous species of flora or  
4 fauna no longer existing in the wild of Ontario. One  
5 bird and one plant species are considered to be  
6 extirpated in the province.

7 Q. But those particular species do exist  
8 elsewhere?

9 A. That's correct.

10 MR. FREIDIN: And again that is dealt  
11 with on MOE Question No. 7, Mr. Chairman.

12 Q. I am sorry, Question No. 8.

13 A. The final category extinct species  
14 are any species of flora or fauna formerly indigenous  
15 in Ontario which no longer exit anywhere in its former  
16 range. The eastern elk and the passenger pigeon are  
17 the two species that fall into that category.

18 Q. I understand that you have a very few  
19 photographs to perhaps identify some of the better  
20 known species and some of the lesser known species of  
21 wildlife in Ontario.

22 A. Yes, I have. The purpose of showing  
23 these is threefold: One, it is a little difficult to  
24 describe wildlife without at least describing the  
25 splendour of some of it in words on a mike, photographs



1 do it much better justice.

2 Secondly, they illustrate a popular use  
3 of wildlife these days and that is photography. Based  
4 on a 1973 study, approximately a million Ontario  
5 residents today participate in viewing or photographing  
6 birds and animals.

7 The third point I think I want to make  
8 with these few photographs is that we are going to look  
9 at few species that are -- the Ministry has a mandate  
10 beyond the boundary of the undertaking and they require  
11 some of our efforts also.

12 One of my favourite, this is north of the  
13 undertaking but it is a shot of some polar bear up in  
14 the Penn Islands on the Hudson Bay coast, great blue  
15 herrons, moose, eleated woodpecker, Canada geese,  
16 white-tailed deer, racoon - this is a mixture of game  
17 and non-game, some of those categories we have  
18 discussed before - mink, the distinctive white throat  
19 patch, great gray owl, walrus - again up in my old home  
20 district of Moosonee - and beluga whales off the mouth  
21 of the Winisk River.

22 Q. All right. I understand that the  
23 next area that you wish to provide an overview on is  
24 the fishery resource?

25 A. That's correct.

1                   If I may, I will start out just with a  
2   general statement. Our fisheries resources in the  
3   province are not only diverse, as shown here on this  
4   photograph, but are also an indication of the health of  
5   much of our waters. There are about 180 fish species  
6   in the province, including about 118 within the area of  
7   the undertaking. About 50 of those are fished for  
8   support commercially, some of the balance are used as  
9   bait fish.

10                   In terms of distribution, generally  
11   walleyed pike, white fish and brook trout are found  
12   throughout the area of the undertaking. Bass are  
13   generally restricted to the area south of the line from  
14   Kirkland Lake through Lake Nipigon to Lake of the  
15   Woods.

16                   I mentioned at the beginning that I was  
17   trying to illustrate the world class nature of some of  
18   Ontario's resources and the world class nature of some  
19   of our fisheries is best illustrated by the fact that  
20   we sell more non-resident sport fishing licences than  
21   any other North American jurisdiction.

22                   I would like to -- I mentioned before the  
23   aurora trout and I would like to mention again, it is a  
24   unique fishery in Ontario and in a world setting. It  
25   is on the endangered species list and has been

1 re-introduced into several lakes from the world's last  
2 remaining brood stock in Hills Lake Hatchery. We are  
3 attempting to rebuild the population. That effort  
4 again in 1986 and lake trout -- or arora trout angling  
5 is again permitted in several of these lakes.

6 I might mention that one of the questions  
7 that came up in the interrogatories was: If it is  
8 endangered, why have we introduced angling? There was  
9 three objectives in the rehabilitation plan for aurora  
10 trout and the first one was to ensure stock  
11 maintenance. And what we try to do is take the stock  
12 that was left in Hills Lake Hatchery and move it into  
13 several locations. Natural reproduction, and they have  
14 been introduced in some lakes where angling is not  
15 permitted to try and recreate natural reproduction for  
16 aurora trout.

17 And, finally, to increase the awareness  
18 and recreational benefits from aurora trout and use  
19 surplus stock to do it and, in that case, we opened up  
20 some angling seasons for them.

21 Q. Now, in this section of lakes you  
22 have a section on trout lakes in Ontario and, in fact,  
23 you have a figure, Figure 16.2 on page 74 showing the  
24 distribution of lake trout lakes in Ontario.

25 Is there any particular reason that lake

1 trout lakes were singled out for this type of  
2 attention?

3 A. I believe there is. Ontario has  
4 about a sixth of the world's lake trout lakes, just  
5 over 2,100 of them. They are found throughout the  
6 undertaking, but as Figure 16.2, which is shown there  
7 illustrates, they could best be described as not all  
8 over the place but contiguous with a high concentration  
9 in some areas and complete absence in others.

10 If you note the areas that there is an  
11 absence of, again, the great clay belt area that I  
12 noted when I was up at the screen a few minutes ago,  
13 that is an area of absence. Some of the area around  
14 where North Bay would be on that map, again if you  
15 looked on the previous soils map, soils have a tendency  
16 to be a little deeper there and, again, it is an area  
17 of absence of lake trout lakes, in a general sense,  
18 just looking at distribution there.

19 Lake trout lakes have a tendency to be  
20 clear, cold, less productive and in the shallow soiled  
21 areas of the Canadian shield.

22 The distribution across the province.  
23 The clusters on that map there; there are 449 lakes in  
24 our northwestern region, 371 in the northcentral and  
25 707 in the northern region. That accounts for about



1 two thirds of the total number of lake trout lakes.  
2 The Algonquin region has 424 of them, the northern  
3 region has 102, eastern region has 49, and the central  
4 and southwestern regions have a total of 3.

5 Q. And are you aware, will later panels  
6 be dealing with the sensitivity of lake trout lakes to  
7 disturbance in comparison to non-trout lakes.

8 A. Yes. Methods to protect fish  
9 habitat, trout and otherwise will be described in the  
10 guidelines for the protection of fish habitat and  
11 timber management and those guidelines will be  
12 discussed by Panel 8 I believe.

13 Q. So are you able to provide any  
14 general information as to the comparative sensitivity  
15 of lake trout lakes as opposed to other types? I am  
16 talking now about disturbances that are potentially  
17 caused as a result of erosion or sedimentation, that  
18 sort of thing?

19 A. Generally the guidelines will reflect  
20 a more conservative approach to options around cold  
21 water lakes.

22 Q. And trout lakes are cold water lakes?

23 A. That is correct.

24 Q. The next section of your report, Mr.  
25 Kenrick, deals with infrastructure. Could you define

1       what you mean by infrastructure and could you then  
2       describe how this particular section of the report has  
3       been organized?

4                   A.   Infrastructure is largely man-made  
5       structures; roads, railways, communities. I have  
6       elected here to try and simplify this because  
7       infrastructure tends to exist where people exist, is to  
8       discuss population and distribution first of all, and  
9       that includes a discussion on labour force and a  
10      discussion on native peoples in the province, and then  
11      go on to further sections on roads, historic and  
12      archaeological sites and provincial parks.

13                  Q.   All right. Well then, why don't we  
14      deal with the first section then, the population.

15                  A.   This is Figure 17 found on page 76 of  
16      the evidence package entitled: Population of Ontario.  
17      The points I am making here is that 88.7 per cent of  
18      the residents of Ontario, 9.1-million, reside outside  
19      the area of the undertaking.

20                  Of those that reside inside the  
21      undertaking, about 11.3 per cent, just over a million  
22      people, a little over 800,000 of those people, live in  
23      northern Ontario, generally north of the Nipissing --  
24      the southern boundary of Nipissing/Parry Sound, and 2.3  
25      per cent would be southern Ontario residents within the

1 area of the undertaking south of that line.

2 The significance here is most of  
3 Ontario's residents live outside the undertaking.  
4 Inside the undertaking, compared to some of the  
5 population in southern Ontario, could be described as  
6 sparsely populated. Of those residents of Ontario,  
7 northern Ontario, 70 per cent of northern Ontario  
8 residents live in northeastern Ontario, 71 per cent  
9 live in urban areas, over 50 per cent live in five  
10 single communities: Thunder Bay, Sudbury, North Bay,  
11 Timmins and Sault Ste. Marie.

12 There are also an abundance of small  
13 rural communities. From a Ministry of Northern  
14 Development and Mines source there are 162  
15 municipalities with populations of less than 3,000 in  
16 northern Ontario. Approximately 50 of these rely on  
17 single-resource industries.

18 Q. And all that information that you  
19 just referred to in relation to the various types of  
20 urban areas is found on page 75 and 77 of the report;  
21 is that correct?

22 A. That's correct.

23 Just one other observation on population.  
24 The vast majority of northern Ontario population live  
25 along the two major highway corridors, Highway 11 and

1 Highway 17. There are some exceptions to,noteable  
2 ones, but in terms of raw percentages that is a valid  
3 conclusion.

4 Q. I note you have also attempted to  
5 describe the labour force by region on page 78 of the  
6 report?

7 A. That's correct.

8 Q. When you say, by region, what region  
9 are you talking about?

10 A. They are Stats Canada areas, northern  
11 and southern Ontario and I believe the boundary is  
12 roughly again, the southern boundary of the Districts  
13 of Parry Sound and Nipissing is the split between north  
14 and south.

15 If I may just go over; this is again  
16 Figure 18 found on page 78. Some brief observations.  
17 The service sector which is made up of the Stats Canada  
18 category of community, business and personal services  
19 is the largest single component of the labour force in  
20 both southern Ontario and northern Ontario. It is also  
21 the fastest growing. Especially in the north, the  
22 health and service industry is closely linked to the  
23 health of the primary resource industries.

24 I will pick up this point a little later  
25 again, but accommodation and food as well as amusement



1 and recreation are important sub-groups of that service  
2 industry. And they are, in turn, are some of key of  
3 the key indicators of employment and tourism which I  
4 will discuss later.

5 Q. So tourism falls within the services  
6 category?

7 A. That's correct, a portion of it, it's  
8 a portion of the services category.

9 Manufacturing sector, which is the second  
10 largest component provincially but the third largest in  
11 the north. If you will note the number, particularly  
12 the 46,000 listed under the northern Ontario column for  
13 manufacturing, that includes forestry. In the north 70  
14 per cent of the manufacturing jobs are dependent on  
15 forestry and mining.

16 As an illustration of trying to get at  
17 the number of forestry jobs, using a 1983 figure is the  
18 only one I could find that would compare with this, but  
19 about 20,700 people were employed in the forest  
20 products industry under manufacturing in 1973.

21 Q. Now, just so there is no confusion...

22 A. That information was taken from the  
23 previous panel.

24 Q. Panel 5?

25 A. Panel 5.

1                   Q. In this particular figure you have --  
2           the second item is forestry (primary), what is that in  
3           comparison to the portion of forestry which is included  
4           in manufacturing?

5                   A. That includes only the portion of the  
6           wood products industry that is the bush operation of  
7           cutting, timber and hauling it to the mill. Up to that  
8           point is considered by Stats Canada to be primary.  
9           After that processing falls into manufacturing.

10                  Q. Ms. Coke referred to a category  
11           called logging. Would that be the same category?

12                  A. That's correct. If I could just  
13           highlight one other column on this chart and it is  
14           under trade. That's the third largest component in the  
15           province, but the second largest component in northern  
16           Ontario. Largely includes things like all wholesale  
17           businesses. Again in single-industry, northern  
18           communities the health of this industry is dependent  
19           largely on the primary resource industries.

20                  The last one I would call the primary  
21           industries in the north. Mining is the largest  
22           employer. You will note that 37,000 under northern  
23           mining, followed by the logging industry. Farming,  
24           fishing, hunting and trapping exist but to not large  
25           enough numbers, particularly for fishing, hunting and

1 trapping to be pick uped by the Stats Canada  
2 information.

3 Their overall contribution to the economy  
4 is small, but their contribution in some local  
5 communities is significant and, in some cases,  
6 opportunities for which there are no alternatives.

7 Q. You have a number of pages here  
8 following that, Mr. Kenrick, which describe the  
9 distribution of Ontario's native population using  
10 various criteria and perhaps you could review those  
11 and, as you do, perhaps at least indicate what the  
12 various references mean in this particular context.

13 I am referring to references that you use  
14 in the figure such as registered Indians, non-status,  
15 Metis, Inuits, and that sort of thing. Just as you go  
16 through, could you make sure you pick up on those.

17 A. Okay. The definitions I am going to  
18 use were taken from a report prepared by a consultant  
19 for the Ontario Native Affairs Directorate in 1987.  
20 Because it is their statistics I will use their  
21 definitions.

22 Aboriginal people are descendents of the  
23 the original peoples of Canada. The term i used  
24 interchangeably with status -- sorry, the term refers  
25 to status and non-status Indians, Metis and Inuits. It

1 is used interchangeably with the term native people and  
2 indigenous people.

3 For the purpose of the data, I am going  
4 to go through -- a native person is one who is either  
5 registered as such under the Indian Act or who  
6 self-identifies as a native person. Keeping in mind  
7 some of this information -- all of this information is  
8 Stats Canada, so the self-declaration is important.

9 Those who are not registered for whatever  
10 reason but who self-identify as native persons are  
11 referred to as non-status Indians, Metis, or Inuits.  
12 There is currently, I might mention, a movement when we  
13 get looking at the statistics in terms of Indians from  
14 the non-status category to the status category because  
15 of amendments recently made to the Indian Act.

16 A Metis is a person who self-identifies  
17 as a Metis who is of mixed Indian and non-Indian  
18 ancestry. An Inuit is a native who self-identifies as  
19 an Inuit person and who is the descendent of original  
20 inhabitants of northern regions of Canada.

21 Q. When you say self-identify, through  
22 what process is that self-identification to occur?

23 A. In this case it was the 1981 census.

24 Q. All right.

25 A. If I can refer -- given those



1 definitions, if I can refer to Figure 19 which is on  
2 the screen on page 80 of the witness statement. The  
3 1981 census, and I might mention There is a more recent  
4 census but the data is less reliable for native people  
5 in the 1986 census than there was in '81, so generally  
6 the '81 is used.

7 In that census Ontario had a native  
8 population of about 110,550. That amounted to 22 per  
9 cent of Canada's native and 1.3 per cent of Ontario's  
10 population. 70 per cent of those people were  
11 registered Indians, accounting for 77,145.

12 Q. Could you indicate what the  
13 percentage of the native population was of the total  
14 population of Ontario?

15 A. Yes. The native population is 1.3  
16 per cent of Ontario's population.

17 Q. So what we see then on Figure 19 is a  
18 break down of that 1.3 per cent of the native  
19 population in all of Ontario?

20 A. That's correct.

21 Q. All right. Sorry?

22 A. Of Ontario's registered Indians, 39  
23 per cent, 42,645 live on reserve and 34,505 live off  
24 reserve. Slightly more registered Indians live on  
25 reserve than off reserve. 30 per cent of Ontario's

1 native population is either non-status, Metis or Inuits  
2 the largest group there being 19 per cent non-status;  
3 Metis forming 10 per cent, and Inuits 1 per cent.

4 Q. As I understand Figure 20 on page 82  
5 provides the distribution of native people in Ontario,  
6 distribution in terms of where they live; is that  
7 correct?

8 A. That's correct. This is Figure 20  
9 taken from page 82.

10 Q. And can you advise, where do the  
11 majority of native people in Ontario live?

12 A. In southern Ontario.

13 Q. And the percentage between southern  
14 Ontario and northern Ontario, is it indicated on this  
15 particular diagram?

16 A. Yes, it is. The two large circles  
17 that are on the right-hand side, the top one  
18 illustrates that 46,000 native people or 42 per cent of  
19 the native population in Ontario live in northern  
20 Ontario - for your information, 35,000 of those live  
21 within the area of the undertaking - and about 11,000  
22 live north of it.

23 The circle that is below that labeled  
24 southern Ontario, shows 64,000 of Ontario's natives to  
25 live in southern Ontario or 58 per cent of the native

1 population. About 1,500 of those live within the area  
2 of the undertaking.

3 Q. If you could just slow down here for  
4 a minute. In the area of the undertaking, you have  
5 indicated that what percentage of Ontario's native  
6 people live within the area of the undertaking?

7 A. 33 per cent of Ontario's natives live  
8 within the area of the undertaking and they account for  
9 about 3.5 per cent of the population of the  
10 undertaking.

11 Q. In the area of the undertaking?

12 A. That's correct.

13 Q. All right. And within the area of  
14 the undertaking, has there been any breakdown of where  
15 those native people live particularly vis-a-vis whether  
16 they live in urban centres or whether they live outside  
17 of urban centres?

18 A. Yes, there is. Natives tend to be  
19 less urbanized than non-natives. 50 per cent versus 82  
20 per cent urbanized for non-natives. In general, one of  
21 the implications there is that this means that they  
22 have less access to employment and commodity markets  
23 that come with urban living and less access to a  
24 full-range of social and commercial services.

25 30 per cent of Ontario's natives live in

1 seven urban centres, the largest of which is Toronto  
2 with 13,000 natives; 4,000 in each of Ottawa and  
3 Hamilton, about -- between 33 and 3,200 in each of  
4 Sudbury, Sault Ste. Marie, Thunder Bay and London.  
5 Those are figures from the 1981 census.

6 Q. And the figure again then for  
7 urbanized versus non-urbanized, if I can indicate -- or  
8 put it that way. For native peoples in the area of the  
9 undertaking, what percentage live in urban areas in the  
10 area of the undertaking?

11 A. I am not sure I can answer that  
12 question. 50 per cent of natives live in urban areas  
13 in Ontario.

14 Q. All right.

15 A. I would have to go back and rework  
16 the data of how much within the undertaking.

17 Q. That's fine. Thank you.

18 MRS. KOVEN: But doesn't that just  
19 reflect the fact that many reserves are located near  
20 urban areas?

21 MR. KENRICK: I am not sure.

22 MRS. KOVEN I'm not talking about in the  
23 north.

24 MR. KENRICK: In the south --

25 MRS. KOVEN: Yes.



1 MR. FREIDIN: Q. Now, Mr. Kenrick, can  
2 you advise whether native people are involved in forest  
3 management?

4 MR. KENRICK: A. Yes, they are and I  
5 have got some data.

6 Q. All right. And where do we find that  
7 data in your report?

8 A. The figures on native employment  
9 start at the bottom of page 83 and run through  
10 generally to page 85 and some specific Ministry  
11 involvement -- or native involvement in timber  
12 management programs starts on page 86 and runs to the  
13 bottom of 87.

14 Q. Okay. Well, perhaps then before you  
15 get into the examples of their involvement in forest  
16 management activities - you may have touched on it in  
17 your earlier answers - but perhaps you could just give  
18 a brief overview then of the information about  
19 employment generally of native peoples in Ontario  
20 before you do the timber management part?

21 A. Employment rates for natives in  
22 Ontario certainly differ from those of non-natives.  
23 The problem or employment rates are lower, worst if you  
24 will for those living on reserve, especially reserves  
25 in a rural setting.

1                   Employment rates for registered Indians  
2           are 36 per cent on reserve versus 52 per cent off  
3           reserve; that's for registered Indians, other natives.  
4           The non-status Metis and Inuits have an employment rate  
5           of about 59 per cent compared to the non-native rate of  
6           about 64 per cent. And, again, I caution those were  
7           1981 figures. The conclusion there is employment rates  
8           are lowest on reserve.

9                   Population of natives and non-natives  
10          working in each of the primary manufacturing and  
11          service sectors is almost equal, about 7 per cent of  
12          the employed native workers are employed in the primary  
13          industry worth about 5 per cent of employed  
14          non-natives. If I might just illustrate.

15                   Q. You have got a slide up of Figure No.  
16          21 on page 84?

17                   A. That's correct, and it shows employed  
18          workers in primary industries for both natives and  
19          non-natives.

20                   Q. Where do we see the primary  
21          industries on those two pie graphs?

22                   A. They are all primary industries, all  
23          of the components of the pie graph. What I would draw  
24          your attention to I believe is the forestry component,  
25          the bottom blue area in the left-hand circle. The

1 largest primary sector employer in Ontario is forestry.

2 Q. Of native peoples?

3 A. Of native people. Whereas for  
4 non-natives, the largest piece of employment is in  
5 agriculture. That, according to 1981 statistics, the  
6 native figure there that corresponds to the 38 per cent  
7 is 905.

8 If I might just mention one other thing  
9 there that the surprisingly low figure shown under  
10 fishing and trapping is a little misleading on the  
11 native one. In many cases, the activities of fishing  
12 and trapping, first of all, are considered to be more a  
13 way of life than it is to be an occupation and  
14 therefore it is not declared as an occupation for the  
15 purposes of answering Stats Canada data.

16 The other point is that that is a  
17 reference to employed workers, so there it is a  
18 reference to those included in the work force and I  
19 believe - and I could check on it - but those people  
20 who have not been actively employed or seeking  
21 employment in the last 26 weeks are no longer  
22 considered in the labour force. For that reason, the 4  
23 per cent is a little misleading.

24 I don't have a lot of data, and again my  
25 data source didn't have it from the manufacturing

1 industry, but I would like to take a brief look at the  
2 tertiary industry.

3 Q. What are tertiary industries?

4 A. Public administration, community  
5 business and personal services, again the reference  
6 before to tourism.

7 Q. The various breakdowns then which are  
8 shown on the left-hand pie chart of Figure No. 22 then  
9 describe the various industries which fall within the  
10 definition tertiary?

11 A. That's correct.

12 Q. Okay.

13 A. A couple of observations here. The  
14 per cent of employed natives employed in the tertiary  
15 industries is about 73 per cent compared to 72 per cent  
16 of non-natives employed in that same tertiary  
17 industries. The percentage of the employed native and  
18 non-native work force is roughly the same in the  
19 tertiary industries.

20 The largest component in the native data  
21 there is community business and personal services, of  
22 which tourism is a portion. It accounts for 42 per  
23 cent or just over 10,100 natives.

24 Q. Are you aware, is the fact that  
25 tourism is included there, are you indicating that that



1 is the causal connection between that fact and the fact  
2 that the percentage is 42 per cent?

3 A. Not necessarily. I would -- from my  
4 experience the largest component in there is probably  
5 made up of small community businesses on reserves and  
6 off reserve.

7 Q. Okay.

8 A. In addition to that data, I would  
9 like to highlight that the Ministry has had a  
10 long-standing history in employment in encouraging  
11 natives to participate in the timber management  
12 activities.

13 I would like to give some illustrations  
14 of that, if I may.

15 Q. And I understand that the  
16 illustrations that you will be referring to are listed  
17 on page 86 and 87 of the report?

18 A. That's correct. Just to explain a  
19 little bit of a trend by way of introduction. A 1984  
20 report stated there was about 450,000 hectares of  
21 Indian reserve land in Ontario. Until about 1974 these  
22 lands were the source of the majority of native timber  
23 harvesting.

24 Since that time the harvest from  
25 provincial Crown lands has surpassed the amount

1 harvested from reserve lands. Increasingly native  
2 involvement in timber management activities has,  
3 therefore, focused on renewal operations both on and  
4 off reserve, but mostly on reserve.

5 Some examples of native involvement in  
6 forest management activities are as follows:

7 Mr. Osborn I believe quoted figures with  
8 the consent of the band, the forest resource inventory  
9 has been completed on 26 of 36 reserves in the  
10 province. In 1986 there were nine Order-in-Council  
11 licences and 7 district cutting licences issued to  
12 natives.

13 Another reference - and I believe it was  
14 in a federal report, 1986 reference - 93 Indian  
15 operated businesses -- there were 93 Indian operated  
16 businesses in forestry sector in Ontario in 1986. Two  
17 thirds were those were logging and saw mill businesses.

18 THE CHAIRMAN: Is the figure you have got  
19 in the second paragraph 100,000 cubic metres refer to  
20 all the volume for all of the licences or per licence?

21 MR. KENRICK: Licensed total, that one.

22 THE CHAIRMAN: That is the total?

23 MR. KENRICK: Yes. District cutting  
24 licences have a tendency to be small, Order-in-Council  
25 licences larger.

1 I might mention that isn't the total  
2 amount of wood harvested by natives and I will make  
3 reference to it as I go through here.

4 MR. MARTEL: I would like to ask a  
5 question. There are no figures or numbers, there are  
6 just statements. Have you got have a breakdown for the  
7 Board as to how many people -- native people are  
8 involved in each of these activities?

9 We have no way of knowing about the  
10 numbers of native people involved. We have vague  
11 references.

12 MR. KENRICK: That's correct. It is hard  
13 to get those numbers, in fact the Human Rights Code as  
14 an employer prohibits us from collecting some of that  
15 data. That's one of the reasons I can't provide total  
16 numbers for amount of -- or numbers of native people  
17 that are employed. I can give you illustrations.

18 MR. MARTEL: You can provide those  
19 figures for white people, I presume?

20 MR. KENRICK: No, I don't believe I  
21 could. I don't think I could get numbers for any  
22 colour or race or cultural group sub-set of people that  
23 we employ. It makes the numbers a little difficult, I  
24 appreciate that.

25 Some further illustrations. In the past

1 the Ministry has held some alienated Crown timber close  
2 to reserves to enable licensing to native people. I  
3 just clarify that's not a policy it's a practice where  
4 there is unalienated timber close to reserve lands.

5 Some illustrations. There are currently  
6 negotiations going on with the Lac Seul Band on the  
7 Sioux Lookout Crown management unit.

8 In the past that method has been used for  
9 the Michipicoten Band, the Kidoe/Kilkinney operating  
10 blocks in Nipigon Crown unit are tendered annually and,  
11 those tenders are restricted to natives of the Nipigon  
12 and Beardmore area.

13 The Ministry of Natural Resources has  
14 participated in third party licence negotiations with  
15 existing licensees. By way of illustration, White  
16 Sands Development Corporation, the Armstrong Band has a  
17 thirty party licence on the Domtar licence, involved in  
18 harvesting, site prep, planting and tending operations.  
19 Red Rock Band has a third party licences on Domtar  
20 licence. There are currently discussions between Great  
21 Lakes and the Osnaburgh and Saugene Bands and between  
22 MacKenzie Forest Products and Lac Seul Band.

23 Q. Mr. Kenrick, before you leave that  
24 page, the second last item on page 86 where you refer  
25 to a practice that has been followed in the past about



1 unalienated Crown timber close to reserves would be  
2 held -- pardon me, areas close to the reserves would be  
3 held unalienated so they can be licensed to native  
4 people.

5                   You said that's not a policy, but it's a  
6 practice. Can you advise, at what level is that  
7 decision made? In terms of resource management  
8 decisions, where does the decision get made as to  
9 whether there should be an area held in that manner or  
10 not?

11                   A. In the absence of a policy that  
12 addresses it provincially those decisions are generally  
13 made on the initiative of individual district managers.  
14 Where the opportunity existed to direct some economic  
15 benefits towards a native reserve, that opportunity has  
16 been seized upon, if you will.

17                   Q. And the identification or the actual  
18 creation of a reserve of that type, would that be dealt  
19 with in the timber management plan?

20                   A. I am not sure. The creation of a  
21 reserve, I missed your question.

22                   Q. If in fact there was an area around a  
23 reserve to be held unalienated to enable licensing to  
24 native people, would that particular area, if it was so  
25 designated, appear in a timber management plan, or do

1       you know whether it would?

2                   A. I think that question is probably  
3       better to be asked of a forester.

4                   Q. All right, thank you.

5                   A. Some other illustrations. The  
6       Ministry has provided support for what Federal reports  
7       are now calling a prototype breed of native-owned  
8       company providing forest services in the Treaty 3 area  
9       known as Indian Forestry Development Program. It was  
10      established as the Indian Logging Program around 1962  
11      and about 1977 it shifted -- its focus shifted largely  
12      to silvicultural efforts on reserve lands. That  
13      particular native-owned company uses the Ministry's  
14      timber management planning manuals.

15                   The Ministry has hired native tree  
16      planters and advises native groups on establishing  
17      contractsing companies to bid on company, Crown or FMA  
18      planting contracts.

19                   The Lac Seul Band was advised and bid and  
20      planted in excess of 200,000 trees in 1986. 90 per  
21      cent of the Crown plant on the Kenora Crown management  
22      unit was planted by members of the  
23      Grassy/Sabusgong/White Dog reserves, 687,000 trees.

24                   Quite frequently those contracts were  
25      tailored specific to attract native bidders, if you

1 will.

2 Private contractors have trained and  
3 hired natives to work on planting contracts - I'm  
4 sorry, I don't have any numbers there. Sharont  
5 Enterprises employs natives in the James Bay coast, I  
6 understand.

7 The Islington Band has received Ministry  
8 of Natural Resources funds towards establishing a  
9 greenhouse operation with a 3-million seedling capacity  
10 That greenhouse was completed in 1987 and just recently  
11 we purchased our first crop.

12 The Ministry has also covered training  
13 and development costs for a period I believe two years  
14 and some of the operating costs by agreement.

15 Q. For that particular band?

16 A. That's right. Native people have  
17 been hired on both tending and cone collecting  
18 projects. The Ministry annually trains and hires  
19 northern natives for forest fire suppression duties on  
20 forest fires. At the peak of this year's fire season,  
21 that numbered about 800 natives.

22 In 1986 there was a survey of the Ontario  
23 public service and it indicated that 2.8 per cent of  
24 the surveyed Ministry of Natural Resources staff was  
25 composed of natives, 70 per cent of these were located

1 in the northern regions.

2 I know from my experience in Moosonee  
3 which is very much a native environment, 27 per cent of  
4 my classified staff was native people, 71 per cent of  
5 the unclassified staff was native people, 49 per cent  
6 of the junior rangers and 95 per cent of the  
7 experienced program.

8 MR. MARTEL: Out of the 2.8 per cent  
9 surveyed Ministry of Natural Resources personnel, can  
10 you tell us what the numbers are and how many were  
11 permanent and part time?

12 MR. KENRICK: I can't with the  
13 information in front of me, but I believe that can be  
14 obtained.

15 MR. FREIDIN: We will attempt to get that  
16 breakdown, that is the number of permanent and part  
17 time MNR employees--

18 MR. MARTEL: In this service.

19 MR. FREIDIN: --that are represented as  
20 2.8 of the surveyed people.

21 MR. MARTEL: Right.

22 MR. KENRICK: I would like to note one  
23 other initiative. As part of the government's  
24 Employment Equity Program, the Ministry recently has  
25 approved a component to increase native representation



1 in the Ministry of Natural Resources.

2 The goal of that program is to provide  
3 employment opportunities to qualified native people.  
4 Its objective is to increase the number on classified  
5 staff. The strategies that have been approved are to  
6 increase, first of all, seasonal recruitment in  
7 selected areas, to increase native awareness seminars  
8 across the Ministry and, eventually, to develop a  
9 resource management apprenticeship program.

10 From my experience, one of the  
11 limitations on us hiring native people is finding  
12 qualified people in the first place. I wish there was  
13 more native people that attended resource management  
14 schools. When I was in Moosonee, we found two local  
15 chaps and both of them are very close to being on staff  
16 right now.

17 MR. FREIDIN: Q. Now, Mr. Kenrick, the  
18 second category under infrastructure are roads. And  
19 can you advise what type of roads are you referring to  
20 when you are indicating roads are part of the  
21 infrastructure?

22 MR. KENRICK: A. Yes. There are some  
23 different categories here. Provincial highways,  
24 secondary highways and tertiary highways. I think the  
25 relative sizes of these numbers are interesting. Of

1 those three categories, in other words, the MTC  
2 category if you will, account for about 21,000  
3 kilometres of roads in Ontario. County, municipal,  
4 township and urban roads account for 131,000  
5 kilometres. Bush roads - and I will explain the  
6 definition a little later - largely built to extract  
7 timber in the north, account for 33,000 kilometres that  
8 we currently have an inventory of.

9 You will note that that number, in terms  
10 of the bush roads, is larger than the total provincial  
11 highway system counting provincial, secondary and  
12 tertiary highways.

13 In a single year the timber industry  
14 either directly or indirectly through Crown work  
15 programs contributes significantly to the road  
16 infrastructure in the province. Some figures from  
17 1986-87. The Crown or the industry with assistance  
18 from the Crown constructed or reconstructed 1,720  
19 kilometres of roads and maintained just over 9,000  
20 kilometres. That 9,000, if you compare it back to the  
21 provincial highway system, is a little less than half  
22 the size of the provincial highway system.

23 A couple of notes just about return bush  
24 roads as it is used there.

25 THE CHAIRMAN: Excuse me. Is the

1 provincial highway system -- are all these figures you  
2 are referring to for the whole province or the area of  
3 the undertaking?

4 MR. KENRICK: No, the provincial highway  
5 figure there of 21,000 is for the entire province.

6 THE CHAIRMAN: Thank you.

7 MR. KENRICK: The 33,000 kilometres is  
8 for the entire province. The vast majority of those  
9 being within the area of the undertaking. I can  
10 discuss some exceptions.

11 And the 9,000 kilometres, again, the vast  
12 majority of that is within the area of undertaking.  
13 Bush roads used in that context - I almost wish I  
14 hadn't used a term that general now - but it refers to  
15 most -- first of all, the numbers that are used there  
16 refer to only roads for which there is government  
17 subsidy; in other words, there are public funds in the  
18 roads that are included in the 33,000 kilometres or in  
19 the 9,000 kilometres, because normally we do not fund  
20 tertiary roads.

21 It is fair to say that that 33,000  
22 kilometre figure, as well as the 1,700 kilometre figure  
23 mostly includes primary roads, includes some secondary  
24 roads, and some but hardly any tertiary roads. The  
25 tertiary roads that would be include in there would be

1 ones that were not generated largely by the logging  
2 industry. They would be ones -- roads built by the  
3 Ministry to access points, to tower sites, included in  
4 there there is some of the winter roads that extend  
5 into the north, in the northwest and go north of  
6 Moosonee up the Hudson Bay coast.

7 The vast majority of those roads are  
8 related to logging, but not exclusively.

9 MR. FREIDIN: Mr. Chairman, there were a  
10 couple of interrogatories in relation to this reference  
11 to bush roads. One was from the Northern Ontario  
12 Tourist Outfitters. Theirs is Question No. 4.

13 I would like to file that as an exhibit,  
14 and also Question No. 14 from the Canadian  
15 Environmental Law Association which asked a question  
16 regarding the amount of expenditure by the Crown on  
17 some of the roads which were referred to in this  
18 particular paragraph on page 88 of the witness  
19 statement.

20 So if we could mark those as separate  
21 exhibits.

22 THE CHAIRMAN: Very well. The first one  
23 will be marked Exhibit 212.

24 ---EXHIBIT NO. 212: Interrogatory Question No. 4 from  
25 the Ontario Tourist Outfitters  
Association.



1

2

THE CHAIRMAN: The second one is Exhibit

3

213.

4

---EXHIBIT NO. 213: Interrogatory No. 14 from CELA.

5

MR. FREIDIN: (handed)

6

MR. CASTRILLI: Mr. Chairman, excuse me.

7

Could you advise, was it the Northern Ontario Tourist

8

Outfitters Association that is Exhibit 211?

9

THE CHAIRMAN: 211 -- 212, sorry.

10

MR. CASTRILLI: Okay.

11

THE CHAIRMAN: And yours was 213.

12

MR. CASTRILLI: Thank you.

13

MR. FREIDIN: Q. Perhaps we could move

14

on, Mr. Kenrick, to the third category that you are

15

discussing under the heading infrastructure found at

16

the bottom of page 88, historical and archaeological

17

sites.

18

MR. KENRICK: A. If I may, prior to

19

doing that, just one observation because the topic of

20

roads comes up again and again in my witness package.

21

Bush roads are considered by some to be

22

an amenity which gives them access to local

23

recreational resources, a feeling usually strongly held

24

in northern communities. To others they are seen as an

25

intrusion into the wilderness, somewhat of a

1 dichotomy.

2                   Because of this differing view of roads,  
3 the timber management planning process deals with road  
4 planning extensively. Locally roads are dealt with on  
5 a case-by-case basis, each on its own merits. I will  
6 mention as I go through particularly the stakeholder  
7 groups, the topic of -- when I am talking about issues,  
8 roads comes up repeatedly.

9                   Historical and archaeological sites.

10                  The earliest evidence of human occupation  
11 in Ontario follows the glacial period about 11,000  
12 years ago. From then until now man adapted to his  
13 environment, improved his implements and left  
14 artifacts.

15                  Today these sites form part of our  
16 history and infrastructure and, if I may make reference  
17 to Figure 23 which will indicate - and that is found on  
18 page 90 - indicate a recording system that the Ministry  
19 of Culture and Communications keeps and that is where I  
20 got the data.

21                  The number of known registered  
22 archaeological sites in Ontario by a grid system known  
23 as the Borden Block -- the Borden System, rather, there  
24 is a grand total of 10,695 archaeological sites known  
25 and registered in Ontario as of February, 1988.

1                   Some observations. The density  
2 definitely decreases as one goes from south to north.  
3 Two thirds of those sites are in southern Ontario,  
4 approximately the French River being the division.

5                   Q. Where is the French River? It has  
6 been referred to by a number of witnesses as being an  
7 important line.

8                   A. South of North Bay, generally. If  
9 you look at the map there you will see a line that  
10 extends west from the top part of Georgian Bay --  
11 sorry, east from the top part of Georgian Bay, that is  
12 roughly the location of the French River. Not exactly,  
13 it is a little farther south than that, but...

14                  Q. That is the fifth line up from the  
15 bottom, when you say from Georgian Bay?

16                  A. Fifth full line, yes.

17                  Q. The line below 418?

18                  A. That's right.

19                  Q. And the French River then runs for  
20 that area -- are you talking easterly or westerly now,  
21 just so I know where this line is.

22                  A. Runs easterly, flows westerly.

23                  Q. Okay. Flows westerly, okay.

24                  A. The numbers on that map reflect, to  
25 some extent, to a large extent where archaeological

1 searches have occurred in the past. A great many more  
2 in southern Ontario than in northern Ontario.

3 It probably reflects, to some extent, the  
4 major historical travel routes in the south and along  
5 the Great Lakes. It probably reflects the less  
6 permanent nature of habitation sites in the far north.  
7 And if one looked at the individual sites, I am told on  
8 good advice from MCC that the vast majority of those  
9 would generally be found adjacent to long-used travel  
10 corridors or rivers and lakes in shoreline areas.

11 That has got some special significance, I  
12 believe, in this undertaking. Logging generally avoids  
13 or has limited impacts along water courses and,  
14 therefore, there is a natural sorting between most of  
15 the areas where archaeological sites are apt to occur  
16 and those areas where logging normally occurs.

17 I might mention here that through an  
18 agreement with the Ministry of Culture and  
19 communications recently a working group has been set  
20 up. That working group will produce timber management  
21 guidelines for the protection of Heritage resources,  
22 and those guidelines should be available hopefully by  
23 the spring of 1989

24 On that working group is the steering  
25 committee part of it. There are representatives from



1 the Ministry of Culture and Communications, Ministry of  
2 Natural Resources, the OFIA, Ontario Forest Industries  
3 Association and representatives from the archaeological  
4 community.

5 The production of that guideline package  
6 will involve workshops and there will be participation  
7 from native groups including NAN, Nishnawbe-Aski  
8 Nation, NOTO will be represented, Northern Ontario  
9 Tourist Operators and the Ontario Federation of Anglers  
10 & Hunters along with others.

11 Further protection is afforded many of  
12 these sites by their inclusion into the provincial park  
13 system or the Canadian Heritage river system. Canadian  
14 Heritage river system includes rivers of outstanding  
15 national significance and now includes the French and  
16 Mattawa River an historic route. A nominated candidate  
17 river systems include the Missinaibi running from --  
18 including from the Chapleau area up into the Hudson and  
19 James Bay.

20 The Missinaibi River in northeastern  
21 Ontario and the Bloodvein and Boundary Waters Voyageur  
22 Waterway in the northwest.

23 Q. What is the significance of something  
24 being included in the Canadian Heritage river system?

25 A. I think it speaks to the historical

1       significance of that area in a provincial context. In  
2       all cases those areas are also in the provincial parks  
3       system.

4                   Q. In all cases they are in the  
5       provincial parks system?

6                   A. Yes.

7                   Q. And when you deal with provincial  
8       parks then, which I understand is the next category,  
9       and perhaps you can now indicate: How does the  
10      provincial parks creation, as a result of a river  
11      system, act to protect these particular types of sites?

12                  A. Okay. Ontario boasts the second  
13      largest provincial park system in Canada at the current  
14      time, second only to Quebec. It includes or about to  
15      include, given there are some parks that the mechanics  
16      are going through regulation haven't been completed  
17      yet, but the decision has been made - approximately  
18      6.3-million hectares in the province. This accounts  
19      for about 6 per cent of the land and water area of the  
20      Province of Ontario.

21                  The goal of the provincial parks system  
22      is twofold; it's both to protect provincially  
23      significant natural, cultural and recreational  
24      environments and to provide a variety of outdoor  
25      recreation opportunities in a system of provincial

1 parks.

2 Obviously - I don't know where I coined  
3 this from - but all parks cannot be all things to all  
4 people. Ontario's parks are, therefore, divided into  
5 six broad categories, classes. Each of which meet one  
6 or more of four park's objectives to varying degrees.

7 I would just like to go over briefly the  
8 four objectives of the provincial parks system.

9 A protection objective, to protect  
10 provincially significant elements of the natural and  
11 cultural landscape of Ontario; a recreation objective,  
12 to provide provincial park outdoor recreation  
13 opportunities ranging from high intensity day use to  
14 low intensity wilderness experience; a Heritage  
15 appreciation objective to provide opportunities for  
16 exploration and appreciation of the outdoor natural and  
17 culture heritage of Ontario; and a tourism objective,  
18 to provide Ontario residents and out-of-province  
19 visitors with opportunities to discover and experience  
20 the distinctive regions of the province.

21 Given those four objectives and given  
22 there are six classes of park, I would like to just  
23 illustrate with a few slides how each of the classes of  
24 parks contribute to those objectives.

25 This shot here is taken in Quetico

1 Provincial Park which is one of the wilderness class  
2 of parks. Wilderness classes of parks contribute  
3 primarily to the protection, recreation and heritage  
4 appreciation objectives, those three.

5 This shot taken not too from here is  
6 Ouimet Canyon and it is a nature reserve class of park  
7 and nature reserve classes of park contribute primarily  
8 to the protection and heritage appreciation objectives.

9 Q. What is that particular subject  
10 matter which is protected in that particular park?

11 A. The geologic site, the cliff. Rather  
12 dramatic.

13 Petroglyph Provincial Park in Bancroft  
14 area is an illustration of an historical park and they  
15 meet both protection and heritage appreciation  
16 objectives.

17 Probably the best known of our provincial  
18 parks Algonquin Park, a natural environment park which  
19 contributes to all four, the protection, recreation,  
20 heritage appreciation and tourism objectives.

21 MR. MARTEL: Is there multi-use of that  
22 park?

23 MR. KENRICK: What do you mean by  
24 multi-use?

25 MR. MARTEL: Well, the old multi-use



1 concept of doing some harvesting and so on?

2 MR. KENRICK: Logging occurs in only -  
3 and I will address this a little later - but only in  
4 two provincial parks in the province, Algonquin being  
5 one of them.

6 The fifth category waterway park and this  
7 is a scene from the Chapleau/Nemegosenda Waterway Park  
8 in Chapleau District. Those classes of park contribute  
9 to all four of the parks objectives.

10 And this is one of the splendid beach  
11 resources we have and this one is on Pancake Bay in  
12 Lake Superior. It is a recreation class park and meets  
13 the objectives of -- or contributes to the objectives  
14 of recreation, heritage appreciation and tourism.

15 In addition to the four objectives, the  
16 six classes of parks, parks can also be zoned on the  
17 basis of either resource significance or recreational  
18 potential. Hence, the protection objective while  
19 largely met through the wilderness and nature reserve  
20 classes can also be met through nature reserve and  
21 wilderness zoning in another class of park.

22 MR. FREIDIN: Q. I understand that a  
23 representative of the Parks Program is going to give  
24 evidence in Panel No. 7?

25 MR. KENRICK: A. That's correct. Again,

1 this an overview.

2 This approach to park planning which  
3 includes multi-objectives, multi-classes of parks and  
4 different levels of zoning is an organized and  
5 systematic approach to park system planning and is  
6 viewed and has been borrowed by other provinces and is  
7 viewed as being one of the best in North America.

8 I would like to, if I may now, address  
9 the topic of park distribution in the province. If you  
10 will refer to Figure 24 on page 94, some more elaborate  
11 map and it is also in hard copy right behind me.

12 There are 270 parks, as I mentioned, in  
13 or about to be in regulation. It includes 53(1)s that  
14 were recently announced in May of this year. They  
15 cover 6.3-million hectares of land and water or about 6  
16 per cent of the province.

17 99 per cent of that area is in the five  
18 northern regions; northwest, northcentral, northern and  
19 northeast and Algonquin.

20 Q. Which in fact composes most of the  
21 area of the undertaking?

22 A. That's correct, the vast majority of  
23 it. 1.9-million hectares of that area is within the  
24 area of the undertaking.

25 The distribution of parks by class, if I

1 can refer you to the map. The larger green areas most  
2 noteably if you look at Polar Bear Park at the very top  
3 of the map, there are 8 wildnerness parks in the  
4 province. Waterway parks, the blue linear features,  
5 there are 31 waterway parks in the province. The  
6 yellow dots on that map are the natural environment  
7 parks and there are 67 of those.

8 The nature reserves are the green dots on  
9 that map, there are 84 of those. There are 76  
10 recreational parks and 4 historical parks. That adds  
11 up to the total of 270.

12 Q. Mr. Kenrick, the map that is up on  
13 the easel there, is that a reproduction of what you  
14 have got on the slide?

15 A. Yes, it is the same map exactly.

16 Q. And it is a reproduction of the  
17 information which was -- part of which was indicated in  
18 Figure 24?

19 A. Again, there is note at the bottom of  
20 24 that says, "Note: A larger scale map depicting the  
21 the provincial parks in more detail will be available  
22 in the EA reading room."

23 THE CHAIRMAN: Perhaps we should mark  
24 that as an exhibit. Exhibit 214.

25 MR. FREIDIN: Yes, we would like to do

1 that.

2 ---EXHIBIT NO. 214: Large-scale map depicting  
3 provincial parks.

4 MR. KENRICK: There are in fact some  
5 errors on that map on Figure 24, but the slide and hard  
6 copy there is a better map.

7 MR. FREIDIN: Mr. Chairman, I will get  
8 something and mark it later. I don't have a--

9 THE CHAIRMAN: Very well.

10 MR. FREIDIN: --thick enough pen at the  
11 moment.

12 Q. Now, Mr. Kenrick, you described  
13 protection as being one of the objectives of the park  
14 system. Can you advise whether the Ministry's goal of  
15 protection and conservation is addressed in any manner  
16 outside of provincial parks?

17 MR. KENRICK: A. Most certainly is.  
18 Supplementing the system of provincial parks there are  
19 systems of national parks, conservation authority areas  
20 in both northern and southern Ontario.

21 Q. You are referring to information  
22 which is contained on page 97 at the moment?

23 A. That's correct.

24 There are holdings of the St. Lawrence  
25 and Niagara Parks Commission. There are holdings of



1 the Nature Conservancy, particularly in carolinian  
2 Canada in the southeast.

3 I might also mention - and it is a  
4 personal observation - that I consider us to be one of  
5 the environmental ministries in this province. There  
6 are other programs such as areas of natural and  
7 scientific interest, which I will talk about in a  
8 minute.

9 We maintain a planning put in review  
10 program which reviews external private sector  
11 development proposals and places conditions on them or  
12 suggests conditions of an environmental nature. We  
13 maintain 1,700 kilometres of canoe routes and something  
14 over 400 access points. We enforce environmental  
15 legislation such as the Game and Fish Act, Endangered  
16 Species Act, Federal Fisheries Act.

17 And, through this particular undertaking,  
18 we have produced guidelines and manuals prepared  
19 specifically for the timber management planning process  
20 related to fish, wildlife and tourism, including  
21 processes to address areas of concern and provide for  
22 value mapping.

23 Q. I understand those latter matters in  
24 guidelines, manuals, areas of concern will be dealt  
25 with by later panels?

1                   A. That is correct, actually Panel 8. I  
2     have mentioned areas of natural and scientific interest  
3     and perhaps, if I may. The map that I am now showing  
4     is on page 98, Figure 26. I am going to be speaking  
5     quite generally about these. Again Panel 7 we will  
6     discuss them in more detail. There is a more detailed  
7     map right behind me, but I think with the level of  
8     detail, dealing with the slide will do.

9                   Q. I was just going to ask you what are  
10    these areas?

11                  A. Supplementing the protection  
12    objective which I talked about of the provincial parks  
13    system is an inventory of areas of natural and  
14    scientific interest affectionately known as ANSIs.  
15    These are publicly or privately-owned areas of land and  
16    water, can be either, selected on the basis of earth  
17    science or life science features - earth science  
18    features are geological, life science features are  
19    ecological - that have provincially important natural  
20    heritage, scientific or educational values.

21                  Figure 26, which I referred to, shows  
22    that there are currently 564 of these sites designated  
23    in Ontario representing significant earth and life  
24    science features and approximately another 140  
25    candidates which are currently under consideration.

1                   Within the area of the undertaking, of  
2                   the 564 designated ANSIs 17 them are ecological life  
3                   science sites, 65 are geological earth science sites, 7  
4                   are combined, for a total of 89.

5                   Q.   So in the area of the undertaking  
6                   there are 89 areas of natural and scientific interest?

7                   A.   That's correct.

8                   Q.   And the break down...

9                   A.   That are designated.

10                  Q.   That are designated.   And the  
11                  breakdown, 17 of those are ecological, 65 are  
12                  geological and 7 are combined?

13                  A.   That's correct.   Some of the other  
14                  140 candidates are also within the area of the  
15                  undertaking.

16                  I might just make the point here that  
17                  designated or not designated, these sites are generally  
18                  dealt with through the area of concern process.   Some  
19                  but not all, depending on whether they are designated  
20                  or not, are identified in the District Land Use  
21                  Guidelines package and both categories are still part  
22                  of the Ministry's database.   We recognize the value and  
23                  can deal with it in this process.

24                  MR. FREIDIN:   Now, Mr. Chairman, I am  
25                  going to enter into the last part of Mr. Kenrick's

1 paper which is the use of those parts of the  
2 environment which he has described to this point in  
3 time.

4 I can't remember what time Mr. Campbell  
5 is going to be back. I can keep going as long as you  
6 want, but the Board might very well have to sit through  
7 some fairly lengthy submissions later and, for the  
8 benefit of the Board and benefit of those people who  
9 are going to have to be making those presentations, I  
10 ask your views on whether --

11 THE CHAIRMAN: Well, Mr. Freidin, it was  
12 the Board's intention to try and embark, subject to Mr.  
13 Campbell's arrival, on the continuation of the argument  
14 and submissions with respect to the motions at around  
15 five.

16 I am not sure if he will be back by five,  
17 but he indicated I believe that he would.

18 MR. FREIDIN: Maybe Mr. Sutterfield  
19 knows. Do you have any idea when Mr. Campbell is due  
20 back?

21 MR. SUTTERFIELD: I believe if the plane  
22 is on time he will be back by five o'clock.

23 THE CHAIRMAN: Okay. And we wanted to  
24 continue with the argument until we complete it today  
25 and, as I recall, we will be hearing from Mr. Campbell,



1 we will be hearing from yourself or--

2 MR. FREIDIN: Ms. Murphy.

3 THE CHAIRMAN: --Ms. Murphy, and also  
4 from Mr. Cassidy with respect to reply on behalf of the  
5 industry's motion. And depending on how long that  
6 takes, that may well take us through to seven or even  
7 eight 'clock.

8 We are not planning I do not think, to  
9 break for dinner before we complete the submissions  
10 today. I think the Board would rather finish it off  
11 and then everyone can take the rest of the evening off.  
12 We also I think, in view of the fact that the court  
13 reporters have now continued for close to an hour and a  
14 half, want to take a break at this time to give them a  
15 break.

16 So this may be a convenient time to break  
17 for the day with respect to the evidence of this panel  
18 and return here around five o'clock, if Mr. Campbell  
19 has arrived, to continue on with the submissions.

20 How long do you expect to be with this  
21 panel?

22 MR. FREIDIN: I expect to be done  
23 tomorrow about 2:30.

24 THE CHAIRMAN: Very well. Then we should  
25 be basically, I think, on track with respect to what we

1 indicated last week in terms of cross-examination  
2 commencing some time tomorrow afternoon.

3 Okay. I think we will break now until  
4 five o'clock rather than having you start into a new  
5 section.

6 MR. FREIDIN: Is it your intention then  
7 to proceed with the submissions before Mr. Campbell  
8 arrives? It was my understanding that he was --

9 THE CHAIRMAN: No, no. We are going to  
10 start off with him.

11 MR. FREIDIN: All right.

12 THE CHAIRMAN: Presuming that he is going  
13 to arrive some time between now and five.

14 MR. FREIDIN: He is going to arrive here  
15 Bruce?

16 MR. SUTTERFIELD: He should be here by  
17 five o'clock.

18 MR. FREIDIN: I mean, Mark. All right,  
19 very well.

20 THE CHAIRMAN: Thank you.

21 Thank you, panel, you are finished for  
22 today.

23 --- (Panel withdraws)

24 --- Recess taken at 4:25 p.m.

25 --- Upon resuming at 5:00 p.m.

1 THE CHAIRMAN: Thank you. Be seated.

2 Good afternoon, Mr. Campbell.

3 MR. CAMPBELL: Good afternoon, Mr.

4 Chairman, Board.

5 Mr. Chairman, my submissions on this  
6 matter are divided into two major parts. The first  
7 will deal with that portion of MNR's proposal which  
8 deals with the filing of material, everything right  
9 through to the second last paragraph on page 3 dealing  
10 with terms and conditions to be filed at a time to be  
11 fixed. And, just generally, in this area we are in  
12 support of the MNR proposal.

13 The second portion of my submissions will  
14 relate to the following two paragraphs.

15 THE CHAIRMAN: Sorry, the ones that you  
16 are in support of, where did that go til?

17 MR. CAMPBELL: That extends right through  
18 to the filing of proposed terms and conditions of  
19 approval and I say, generally. You will hear some  
20 nuances as we go through. But that's to the end of the  
21 second last paragraph on page 3.

22 There will be a second portion of my  
23 submissions which will deal with the final paragraph on  
24 page 3, dealing with specific allegations, and the  
25 first paragraph on page 4, dealing with the requirement

1 to file witness statements.

2 Again, I would say generally that I am in  
3 support of the MNR proposal. I will explain to you  
4 what my understanding of that proposal is in terms of  
5 extending that support and since those two paragraphs  
6 respond in effect to some of the concerns raised in Mr.  
7 Cosman's motion, I will have to deal with those  
8 concerns in this second major area of my submissions.

9 Now, if I could deal with the first area  
10 which will cover the proposal up to and including the  
11 filing of terms and conditions. The Ministry of  
12 Environment is in support of the proposal generally as  
13 I have said, however, there are certain particular  
14 matters which have been raised over the course of the  
15 submissions to you which I feel we should comment upon  
16 and, more importantly, make submissions to the Board  
17 upon.

18 The first question that the Board raised  
19 with respect to these motions was basically one of,  
20 will it save time. And quite fairly, in my view, the  
21 Board made it clear that it was much more interested in  
22 proposals which showed a real prospect of saving time.  
23 My client supports that test and submits that the  
24 proposal put forward to you by MNR satisfies it.

25 We say that for several reasons. First,



1 I think it is important to understand by way of  
2 background what the parties have been faced with in  
3 these proceedings. In its outline presented to the  
4 Board at the procedural hearings, the proponent  
5 referenced approximately 30 pages of text in the EA  
6 Document as relating to Panels 1 to 7.

7 As the Board is aware, since that time  
8 MNR has filed what I roughly estimate to be some 3,000  
9 pages of additional material in the witness statements  
10 distributed prior to the appearance of those panels, as  
11 well as all the other material that we have had to deal  
12 with as we have moved through those panels and moved  
13 towards Panel 7.

14 Now, in my submission the practical result  
15 of this is that all of the parties, in addition to  
16 being somewhat overwhelmed by the volume of material,  
17 do not have any sufficient overall picture of MNR's  
18 evidence to make any useful judgment as to where best  
19 to use their resources or which portions of MNR's  
20 evidence are most important in their panel-by-panel  
21 preparations.

22 Now, at the same time they must deal with  
23 all issues touched upon as they arise, since they have  
24 no practical way to tell whether MNR intends to deal  
25 with those issues again in detail in a later witness

1 statement.

2 With that background, it is our position  
3 that the MNR proposal provides a substantial and real  
4 solution to that problem. The evidence of MNR  
5 supporting its application will all be on the table  
6 and, by allowing more focused participation in  
7 cross-examination, the proposal put forward will save  
8 time overall, in our submission, for several reasons.

9 First, all parties could focus in  
10 cross-examination on matters strictly pertinent to that  
11 panel. As I have said, that as matters now stand the  
12 unknown scope for future panels requires that each  
13 significant matter be dealt with as it arises and  
14 cross-examinations are, therefore, extended.

15 The second reason I say time will be  
16 saved is that without knowing what is coming it is  
17 simply not possible to obtain any agreement amongst  
18 counsel as to what matters should or, perhaps as  
19 importantly, should not require significant hearing  
20 time.

21 Third, in our submission, without all of  
22 MNR's evidence having been made available, the Board is  
23 effectively prevented from managing the process and  
24 influencing counsel to pursue only matters of  
25 significant concern to the decision before it. This is

1       because the Board itself has no benchmark or framework  
2       within which to say to either proponent or to  
3       intervenors: Move on to something more relevant.

4               Now, against that, if this proposal is  
5       adopted, in my submission, both the parties and the  
6       Board will be in a much stronger position to focus  
7       their efforts and I think certainly the Board will be  
8       in a much stronger position to insist - and I mean  
9       insist - that counsel focus their evidence.

10              Now, it is for those reasons, Mr.  
11       Chairman, that it is our submission that the test the  
12       Board raised on the commencement of these motions is  
13       met by this proposal: Time will be saved. I think  
14       that is particularly so when it is recognized that  
15       Panel 7 cannot, in any event, start before November,  
16       will take substantially all of November, we have a site  
17       visit being proposed in November, and that in any real  
18       sense, the now scheduled hearings days that will in  
19       fact not be hearing days under this proposal, are  
20       really quite minimal.

21              Now, like some who have preceded me in  
22       these remarks, I guess in terms of particular matters,  
23       the first particular matter I wish to address was, will  
24       it save time, and you have heard my submissions on  
25       that. I have in total eight sort of particular matters

1       that I want to deal with with respect to the first part  
2       of my support for the proposal.

3               The second particular matter is simply to  
4       observe that if it is possible for MNR to advance the  
5       filing of any of the witness panels, we would add our  
6       voice to those who would encourage them to do so. It  
7       is quite clear, however, that they need very little  
8       urging in this regard. I am not suggesting the Board  
9       need to make any order in this regard, I just recognize  
10      MNR's own view of this matter, as I understand it, that  
11      they do not view these dates as dates on which the  
12      filing will take place if material is available  
13      sooner -- rather, if material is available sooner, it  
14      will be distributed sooner.

15             THE CHAIRMAN: Have you given any  
16      consideration, Mr. Campbell, to the problems that will  
17      arise if the witness statements are delivered sooner  
18      and in number as to the times when interrogatories will  
19      have to be submitted an responded to?

20             MR. CAMPBELL: I would assume that in  
21      that case some sensible schedule for the submission of  
22      interrogatories would accompany those witness  
23      statements recognizing that problem, Mr. Chairman. I  
24      don't think this is something that the Board needs to  
25      make any particular order in respect of. You have



1 experienced counsel before you and they can deal with  
2 it.

3 THE CHAIRMAN: Well, the reason I am  
4 saying this is because tied into that concept of  
5 interrogatories and responses to interrogatories is the  
6 idea of possible future scoping. In other words, it is  
7 not a matter, I think, if we are going to look  
8 seriously down the road at some scoping to tying in the  
9 response time to a certain number of days prior to the  
10 evidence being given, because that will not allow, in  
11 many instances, for any meaningful scoping; the reason  
12 being that if the parties have the answers to their  
13 interrogatories in sufficient time, then they may well  
14 be able to decide that they do not have to address the  
15 issue at the hearing, they are satisfied with both the  
16 information contained in the witness statement and the  
17 interrogatories posed along with their answers.

18 MR. CAMPBELL: I see.

19 THE CHAIRMAN: So that is going to have  
20 to be looked at seriously. It is somewhat compounded  
21 if the witness statements for the future panels come in  
22 in a non-staged manner because the parties, in order to  
23 pose the interrogatories, have to have some time to  
24 both read the witness statements and have their experts  
25 give them advice on them, I would suggest, prior to

1       posing the interrogatories in the first place.

2                       So I think the whole thing is tied up in  
3       a package, if we are looking towards (a) saving time  
4       and (b) some meaningful scoping.

5                       MR. CAMPBELL: I don't disagree with  
6       that, Mr. Chairman. I think there are groups of  
7       panels, in my analysis of it in any event, and based on  
8       what we have seen to date, there are groups of panels  
9       that once that group of panels were available and  
10      interrogatories were exchanged and so on, there could  
11      be considerable scoping done for that group while the  
12      interrogatory process went on for a later group.

13                      In any event, short of the Board  
14      expressing a general view as to how this matter should  
15      proceed so as to complete stages of interrogatories on  
16      a regular basis so as to allow scoping, it would be my  
17      view that the Board should not lay out, at this stage,  
18      any highly rigid schedule which will simply lead to us  
19      being back before you for complaints or amendments of  
20      one sort or another.

21                      I think, in my submission, it would be  
22      more important for the Board to lay out its objectives  
23      of this process, leave counsel to work out the dates  
24      associated with achieving those objectives, but with a  
25      recognition - which is the very next point I was going

1 to come to - that the Board will, at some early date in  
2 February, start establishing dates at which it will say  
3 to the parties: You are to be appear in front of us  
4 with the view of having a discussion on scoping with  
5 respect to this area of the evidence and we expect  
6 everybody to come here prepared to tackle that task in  
7 a meaningful way. And certainly we would support such  
8 an exercise.

9                   You will hear from me again in the course  
10 of my remarks that we do not feel it necessary to  
11 design the whole balance of the hearing at this point.  
12 In our submission, the critical thing is to get the  
13 bulk of that evidence from the proponent out on the  
14 table, everyone will have more confidence in their  
15 understanding of that case and what steps they can then  
16 take once that's there. We think that's the critical  
17 part of the proposal.

18                   THE CHAIRMAN: All right. Just going  
19 back to one matter you just raised and that is, if the  
20 Board were not to lay out any highly rigid schedule for  
21 interrogatories and responses and that kind of thing,  
22 we must bear in mind that there are parties outside the  
23 immediate hearing that also have to have guidance as to  
24 when they have to submit things and when answers to  
25 what they submit have to be given and that kind of

1        thing.

2                        We are not just dealing with the counsel  
3        at this hearing and agreement amongst counsel may now  
4        number close to 19 or 20, if you take the parties  
5        receiving full-time correspondence, not just the five  
6        or six or seven counsel that are present on a daily  
7        basis.

8                        MR. CAMPBELL:    Mr. Chairman, when I say  
9        some sort of agreement among counsel, I guess what I am  
10       doing is trying to reflect the agreement that exists  
11       around this proposal.    It does include a provision of  
12       allowing some 30 to 40 days for receipt of  
13       interrogatories once the panel -- that particular panel  
14       evidence has been distributed and, quite frankly...

15                       THE CHAIRMAN:    The only reason I raise  
16       it, Mr. Campbell, is    we have heard extensive concern  
17       expressed at the preliminaries that if the Ministry  
18       were to dump seven or eight witness statements on  
19       parties at once or in very close progression, that the  
20       parties would not have an adequate opportunity to both  
21       review them, have their experts review them and be able  
22       to pose interrogatories within any acceptable time  
23       limit like 40 days or 50 days.

24                       Fine for one statement or two statements,  
25       not fine for six or seven statements.



1                   MR. CAMPBELL: Well, as I understand the  
2     proposal, it does not contemplate that kind of event,  
3     it contemplates for certain months a number of  
4     statements being spaced out over that month, 30 to 40  
5     days. I am absolutely confident that MNR will be  
6     cognizant of those kind of concerns when it suggested  
7     dates. I also know that their practice has not been to  
8     insist rigidly on the deadlines in terms of submission  
9     of interrogatories and, in my submission, that whole  
10    matter is being dealt with in quite a reasonable way  
11    and the Board can have some confidence that it will  
12    continue to be dealt with in a reasonable way.

13                   That is apart entirely, of course, from  
14    any argument that, from time to time, may arise with  
15    respect to these matters. But, in a general sense, I  
16    think the Board should have a good deal of confidence  
17    in the way it is being handled and should just let the  
18    proposal go in the general outline that it is set out.

19                   Now, I guess that has covered another one  
20    of my particular matters that I wanted to deal with,  
21    that being a scoping exercise. Just again, though, I  
22    might reiterate that the Minister supports such an  
23    exercise once we have seen the full extent of the  
24    evidence and if to deal with it efficiently means  
25    dealing doing it in sections of testimony, that's a

1 judgment that can be made very quickly, as I submit, in  
2 February and a schedule for scoping days established at  
3 that time should the Board wish to pursue that. It is  
4 our position that that ought to be a fruitful exercise.

5 The next particular matter which I wanted  
6 to deal with related to the timing of the Ministry of  
7 Natural Resources filing its concise summary of the  
8 decision which it is seeing from this Board. As I  
9 understood Ms. Murphy's submissions on this matter, it  
10 was basically a concern relating to the intervenors  
11 that led them to suggest that a time for -- an  
12 appropriate time for filing their draft decision was  
13 after Panel 15.

14 Speaking for ourselves only, I would say  
15 that that rationale is not necessary from our point of  
16 view, that it would be helpful to us to have that at as  
17 early a date as is conveniently possible. I say it  
18 that way rather than suggesting any particular date  
19 because it is going to be considerable work for MNR to  
20 produce the witness statements and prepare its  
21 testimony. And this is another matter which, in my  
22 submission, need not be quite as urgent as getting  
23 those witness statements out.

24 I just wish to record that, from our  
25 point of view, it is certainly not necessary to wait

1       until after Panel 15 and, if I might add, it seemed to  
2       me that that was the sense of the other submissions  
3       that were made by other parties on that timing.

4               With respect to the filing of terms and  
5       conditions by parties other than MNR, which is my next  
6       particular matter, I think it would be inappropriate to  
7       require that filing until after the evidence had been  
8       heard on Panel 15 which, from many our points of view,  
9       is a pivotal panel.

10              In a very real sense, what this hearing  
11       is all about is putting in place a planning process as  
12       opposed to a particular decision that something will be  
13       done on a certain specific piece of ground and it is --  
14       certainly in our case, if we were required to draft  
15       proposed terms and conditions prior to hearing the  
16       evidence of that panel, our list might have to be  
17       unnecessarily long and I think it would just be far  
18       more productive to wait until after the evidence of  
19       that panel, but not very much longer after.

20              I think it is important, for reasons that  
21       I will deal with later, that all parties file their  
22       proposed terms and conditions fairly soon after that  
23       point in time, in part, because of concerns raised by  
24       Mr. Cosman as to having notice of matters which he has  
25       to deal with in his evidence and I will deal with that

1 in somewhat greater detail in the second major portion  
2 of my submissions.

3 I agree with Mr. Edwards' submission that  
4 what is probably appropriate at this time, rather than  
5 a formal statement of terms and conditions, is again a  
6 concise summary of the terms and conditions which other  
7 parties may propose and that it be done, in effect, on  
8 a without prejudice basis because there will still be a  
9 lot of evidence to come.

10 I wish to record, though, in front of the  
11 Board that in saying that it be done on a without  
12 prejudice basis, I think it is -- in my submission, the  
13 Board should make it clear in the reasons for its  
14 order, if it chooses to make an order along these  
15 lines, that it expects all parties and counsel to use  
16 their best efforts in putting forward as complete a  
17 summary of their proposed terms and conditions as is  
18 possible to do at that time and that it will frown upon  
19 anyone who is tempted to hide in the weeds a little bit  
20 on this matter.

21 Now, Mr. Chairman, you raised a question  
22 with a number of counsel with respect to now putting a  
23 limitation on evidence-in-chief. In a purely  
24 procedural sense, it is clear that many counsel to whom  
25 you addressed that question did not have instructions



1       and had not anticipated needing instructions on this  
2       matter and, for that reason alone, it is our submission  
3       that it would be inappropriate to make any binding  
4       order on that matter at this time. That said, it would  
5       certainly be appropriate, if that was the Board's  
6       conclusion on the matter, that it intended to canvass  
7       counsel at some later date on that matter and that it  
8       expected parties to obtain instructions in this regard.  
9       I think, again, this is an example of the type of  
10      question that can more easily be settled once we have  
11      seen the full copy of the proponent's evidence.

12               I should also comment, though, that it is  
13      clear that MNR is making efforts to reduce its time in  
14      direct testimony and I raise as a question whether any  
15      such order is really necessary at this time. If  
16      matters continue the way they have where MNR is taking  
17      what only be seen, in my submission, as a reasonable  
18      time to put in its particular panel, a day or two, then  
19      I think we may have designed an answer to a question  
20      that doesn't need to be asked any more. The Board may  
21      not wish to extend that experience to all other  
22      parties, ourselves included however and, for that  
23      reason, may wish to contemplate dealing with this  
24      matter at a later date.

25               THE CHAIRMAN: Do you have any

1 instructions from your client on that point at this  
2 point?

3 MR. CAMPBELL: We are prepared to accept  
4 a limitation, Mr. Chairman, and --

5 THE CHAIRMAN: Is that limitation along  
6 the lines of that suggested by Mr. Hunter, which I  
7 believe was two days?

8 MR. CAMPBELL: I certainly am in a  
9 position that we would be prepared to accept that. I  
10 have to be candid in saying that, though. As you will  
11 hear later in my submission, it is not at all clear to  
12 me that we will be calling any evidence in this case.  
13 If the evidence at the end of case is, in our judgment,  
14 in a satisfactory state for us to argue the points we  
15 wish to make and is complete, in our judgment, for the  
16 Board to make a decision, I see little benefit in us  
17 calling testimony just for the sake of calling  
18 testimony and we would not then do so.

19 If we do call testimony, it will be in  
20 relation to some very particular and pertinent points.  
21 Now, that's easy to say when it is so long away, Mr.  
22 Chairman, but I think that is sort of -- is our general  
23 approach to the case.

24 Mr. Hunter also -- I guess the next  
25 particular matter I wanted to deal with was that Mr.

1 Hunter made a suggestion that MNR be required to call  
2 all of its direct testimony, as I understood it,  
3 immediately commencing February 1st for the balance of  
4 all of its panels, all at once, that is without  
5 interruption for cross-examination.

6 THE CHAIRMAN: I am sorry, the Board is  
7 having difficulty in remembering that point of Mr.  
8 Hunter. Did he say that?

9 MR. CAMPBELL: Well, I understood Mr.  
10 Hunter's submissions to make that proposal and I think  
11 I am fairly certain about that, that that was one of  
12 his starting points on this whole area of how to deal  
13 with the bulk of MNR's evidence, was that on the direct  
14 evidence that, in effect, they be allocated 20 days.

15 And I understand him to mean by that  
16 that - apart from whether it is 20 or 30 or whatever  
17 number is - that it would start February 1st and run 20  
18 days.

19 THE CHAIRMAN: I am sorry, I did not take  
20 it that way.

21 MRS. KOVEN: That was not my  
22 understanding.

23 THE CHAIRMAN: Took a limitation of 20  
24 days, of two days per panel--

25 MRS. KOVEN: He was using that as an

1 example of the time it would take.

2 THE CHAIRMAN: --for the remaining ten  
3 panels, or whatever, it would take 20 days for the  
4 Ministry to put in its case. But I did not certainly  
5 understand from that that it would not be interrupted  
6 by cross-examination and re-examination in the normal  
7 course.

8 MR. CAMPBELL: Well, then we have a  
9 difference in our understanding of Mr. Hunter's  
10 proposal.

11 If the Board does not feel it is being  
12 required to consider it, then I suppose that's fine.  
13 My understanding was that the Board had been asked to  
14 consider it and I would simply like to go on record as  
15 saying that we would oppose that position for several  
16 reasons.

17 THE CHAIRMAN: I do not think, Mr.  
18 Campbell, you have to proceed much further on that  
19 line. I do not think it would be to the Board's  
20 benefit, public's benefit or any of the parties' or  
21 counsels' benefit to listen to ten panels worth of  
22 direct evidence-in-chief and then somehow try and  
23 relate the cross-examination back to whatever points  
24 are raised in chief.

25 Perhaps others have better memories than



1 we do. But I think it would be a most difficult  
2 situation. I do not even think the Board would even  
3 consider it for a moment.

4 MR. CAMPBELL: Well, in light of that  
5 rationale, Mr. Chairman - which exactly mirrors the  
6 argument I was about to make - I will then proceed on  
7 to my next particular matter which I think is my eighth  
8 and final particular matter. And that has to do with  
9 Mr. Castrilli's argument with respect to Section 2 of  
10 Regulation, Section 7 of the Act.

11 Now, Mr. Castrilli has stated clearly in  
12 response to a question from the Board that this  
13 proposal put forward by MNR addresses his concerns with  
14 respect to the production of information. Now, that  
15 said, it is our submission that the Board should not  
16 make any finding or make any comment at all on the  
17 matter of compliance or non-compliance with Section 2  
18 of the Regulation to the Environmental Assessment Act  
19 or with Section 7 of the Environmental Assessment Act.

20 Mr. Castrilli has stated that the  
21 proposal meets his concerns in this regard and, in my  
22 submission - apart entirely from that - the matter of  
23 compliance with those sections is simply not a matter  
24 which is, in any way, an issue within the jurisdiction  
25 of this hearing or relevant to the proposal before you.

1                   Now, having said that, it may well be --  
2           it may well be that in considering your decision on the  
3           acceptability of the Environmental Assessment that the  
4           Board may be asked to make some comment on how and when  
5           the proponent has chosen -- itself chosen to bring  
6           forward the bulk of its evidence in support of its  
7           proposals. And in my submission, it would be quite  
8           proper for the Board to make some comment in that  
9           regard, but it would be inappropriate to go any  
10          farther.

11                   THE CHAIRMAN: So if I understand what  
12          you are saying, Mr. Campbell, you are suggesting that  
13          the Board does not have the jurisdiction to decide in  
14          the course of rendering its decision, or at an earlier  
15          time, as to whether or not the provisions of the Act  
16          have or have not been complied with?

17                   MR. CAMPBELL: The question -- I would  
18          put it somewhat differently, Mr. Chairman. I would say  
19          that there are two specific questions in front of the  
20          Board, the acceptability of the environmental  
21          assessment and the approval of the undertaking and it  
22          is only insofar as matters are relevant to those two  
23          decisions that the Board has to make, that the Board  
24          ought to come to any, what could be characterized as,  
25          any legal conclusion as to compliance with the Act or

1       its Regulations.

2                   THE CHAIRMAN: Well, for example, Section  
3       5(3) which sets out the requirements for the EA itself.

4                   MR. CAMPBELL: That's clearly a question  
5       that goes to the acceptability of the environmental  
6       assessment.

7                   THE CHAIRMAN: Okay. And it is your  
8       submission that the Regulations which in impinge upon  
9       the requirements for the EA itself and/or its  
10      acceptability is not in the same category?

11                  MR. CAMPBELL: Well, I have to deal with  
12      it in the context of the particular section that was  
13      referred to which is Section 2.

14                  And, on that matter, there is a  
15      requirement to list certain reports and so on set out  
16      in the Regulation. Mr. Castrilli has said that he is  
17      satisfied that this procedure will give him precisely  
18      the kinds of disclosure that are contemplated as the  
19      purpose of that Regulation. My submission is that that  
20      being said, that position having been taken, it would  
21      be inappropriate for the Board to go any further on  
22      that matter.

23                  It is not a question that relates, in my  
24      submission, to the acceptability of the environmental  
25      assessment at the conclusion of the hearing. The Board

1 is not charged in any way -- if I could perhaps come at  
2 it slightly differently, Mr. Chairman, the Board is not  
3 charged with the general administration of the  
4 environmental assessment legislation. You have some  
5 very particular questions that come before you under  
6 that legislation and it is to those questions that you  
7 should turn your mind. If they are other matters which  
8 don't relate in a fairly direct way to answering those  
9 two questions then, in my submission, they are beyond  
10 the perview of the Board and the Board should not be  
11 tempted to step beyond that perview.

12 Now, I think, as a practical matter, it  
13 has to be recognized that the environmental assessment  
14 filed gave clear notice of the matters, the general  
15 matters that would be covered in the hearing sufficient  
16 to allow people to judge whether or not they wished to  
17 participate in the hearing and that really all we are  
18 dealing with here in these motions before you is the  
19 practical problems which have arisen as a result of the  
20 abundance of information relating to those matters  
21 which have been provided following the commencement of  
22 these proceedings.

23 And, in my submission, that is simply and  
24 only a question of the Board exercising its control of  
25 practice and procedure in an appropriate way.



1                   THE CHAIRMAN: Okay. And one further  
2 question, Mr. Campbell. What is your view as to  
3 future - and this is without finding any particular  
4 compliance or non-compliance with Section 2 - but what  
5 is your view as to the future requirements that the  
6 Ministry should be following, this is the Ministry of  
7 Natural Resources with respect to providing a list or  
8 schedules or other information as required by Section 2  
9 of that regulation?

10                  MR. CAMPBELL: Well, Section 2 is aimed  
11 at the filing of the EA, Mr. Chairman. If you are  
12 speaking in the sense of future witness statements in  
13 these proceedings?

14                  THE CHAIRMAN: That is right. What I am  
15 talking about is supplementary documentation that will  
16 be relied on in the future by MNR that may not have  
17 been listed.

18                  MR. CAMPBELL: I think they have a clear  
19 obligation to produce that, not only that they are  
20 doing so -- they clearly are doing so in the witness  
21 statements that we are now receiving. They have an  
22 obligation to put forward the material that they are  
23 relying on that is relevant to their case and, I  
24 suppose being -- I suppose that would include studies  
25 and so on that they have done which were particularly

1       pertinent to those matters, but I don't think it goes  
2       so far -- there is always a question of judgment, I  
3       guess, is the problem here. There is always a question  
4       of judgment that counsel has to exercise in saying:  
5       Where do I stop producing unending productions of  
6       papers, reports, statistics and so on and it is  
7       impossible for any one of us to stand here before the  
8       Board and tell you in advance exactly where that line  
9       should be drawn.

10                   There is an obligation on the Ministry to  
11       use its best judgment in drawing that line and we may  
12       argue from time to time about the exercise of that  
13       judgment, but that is the only argument that we need to  
14       have.

15                   Now, as I say, with respect to my general  
16       first area of submissions, where I end up and, in my  
17       submission, what the Board should do is adopt the  
18       proposal before you. I have spoken to the potential  
19       for adding scoping days to be scheduled, but in my  
20       submission the Board should not now try and design the  
21       whole balance of the hearing or the balance of the  
22       procedures for the hearing right today.

23                   In my submission, there will be a much  
24       better degree of comfort amongst the parties and  
25       counsel before you once MNR has put its complete

1 evidence on the table. This is what the proponent is  
2 relying on for its approval and, with that done, with  
3 that confidence, I think there will be the opportunity  
4 to return to procedural questions if real progress is  
5 not being made. And, in my submission, the single most  
6 important thing is to get all of MNR's evidence on the  
7 table and, quite frankly, if that's all that we achieve  
8 as a result of these motions, it is my submission that  
9 that is still a great deal to achieve.

10 I am reminded that there was one other  
11 matter that the Board raised which I had overlooked in  
12 this whole area and on which you had asked various  
13 counsel for submissions and that was the potential for  
14 producing some sort of summary of the evidence at an  
15 earlier date to the actual evidence itself. For  
16 instance, some of the panels that are scheduled for  
17 production in January, to produce in the interim some  
18 sort of summary of that which was to follow in its  
19 complete state at a later date.

20 Speaking for my client, what we are  
21 interested in seeing is the evidence and to put MNR to  
22 the task of producing some sort of intermediate summary  
23 would, in my submission, simply slow them down from the  
24 production of that which we really want to see which is  
25 the entire evidence and would not materially advance

1       our preparations because we would always be reluctant  
2       to fully commit ourselves in a particular direction  
3       because we know there is more to follow.

4                       The biggest problem has been to date, in  
5       my submission, that there is always -- we have this  
6       sense that there is more to follow on all these  
7       matters. That's what, in my view, the Board should  
8       overcome. That's the opportunity to make progress.

9                       THE CHAIRMAN: And this is something  
10      apart from the executive summary that the Board has  
11      already requested?

12                      MR. CAMPBELL: Exactly, yes. As I  
13      understood the suggestion it was for some sort of  
14      intermediate document that we would get a little  
15      earlier. I suspect that that will simply slow down the  
16      overall process towards getting all the evidence out  
17      with no measure of benefit in enabling us to deal with  
18      the issues in a full and material way.

19                      Now, Mr. Chairman, the second major area  
20      of my submissions relates to the final paragraph on  
21      page 3 and the first paragraph on page 4 of the  
22      proposal distributed by MNR. Again, I think we are in  
23      general agreement with the proposal as stated, but we  
24      want to be clear as to what our understanding of that  
25      proposal is in expressing that agreement.



1                   If I could deal perhaps just for a moment  
2       with the top of page 4 it states that:

3                   "All full-time parties would be required  
4                   to file their witness statements within a  
5                   specified time period."

6                   The current rules provide just that and,  
7       in my submission, there has been no persuasive argument  
8       set out as to why those rules should be changed from  
9       this point forward.

10                  If I understand the intent of that  
11       wording, it is that each other party that was calling  
12       evidence should file all of its evidence in advance of  
13       its case proceeding. And while -- in that respect,  
14       from our point of view, should we choose to call  
15       evidence, that would not be a problem from our client's  
16       point of view, particularly. I think you have heard  
17       from other counsel for whom it might well cause a  
18       problem, primarily from a resource point of view and I  
19       think there has to be some appreciation for the  
20       position that some parties find themselves in in that  
21       respect and some willingness to admit that perhaps what  
22       is sauce for the goose need not, in all respects, be  
23       sauce for the gander.

24                  However, it is for others perhaps to make  
25       those arguments. I simply say that we could live with

1       that should we choose to call evidence, but I would ask  
2       the Board to appreciate that it may cause difficulties  
3       for others.

4                       In any event, for other parties, it is  
5       unlikely that any other party is going to be as long as  
6       MNR and the degree of problem associated with not  
7       getting all of that material up front would not be  
8       merely as large. In any event, that is about as much  
9       help as I can provide to the Board on that matter.

10                      But I do understand that MNR's  
11       proposal -- that that paragraph at the top of page 4 of  
12       MNR's proposal taken together with the last paragraph  
13       on page 3 is intended to address certain of the  
14       concerns raised in the OFIA motion.

15                      And I guess I would like now to turn our  
16       submissions to that matter. I have to deal with it  
17       both in the context, first, of the discussion of the  
18       proposal generally and then some particulars in  
19       relation to the motion.

20                      First, with respect to the way it is set  
21       out in the proposal, to the extent that other parties  
22       prior to OFIA's case going in have been able to  
23       identify specific incidents upon which they intend to  
24       refer or rely in evidence then, in my submission, those  
25       parties should be encouraged to give OFIA notice so

1       that any specific incident can be covered by OFIA in  
2       its evidence if the organizations represented by Mr.  
3       Cosman choose to do so. And I think the Board has to  
4       recognize that, as a practical matter, it will not  
5       always be possible to do that and, in our submission,  
6       that circumstance is best met by a limited right of  
7       reply. That's clearly the other side of the coin to  
8       the situation we are talking about here.

9               I should make it clear, however, in  
10       referring to specific incidents we do mean just that,  
11       people associated with organization "x" took a specific  
12       action on or about a specific time or day, some  
13       particularity and that there were some specific  
14       consequences as a result of that.

15              In our submission, this proposal as put  
16       forward by MNR should not engender a right to reopen  
17       the general issues of this hearing. It should be aimed  
18       at very specific and narrow incidents.

19              Now, second. With respect to the way Mr.  
20       Cosman's motion is framed, although in fairness to him  
21       I have to say it is not reflected in the relief sought  
22       but rather in the rationale put forward for his motion,  
23       I do say that the rationale for his motion relates to  
24       allegations being made by opposed parties.

25              I will remind the Board of our position

1 in this hearing. The Ministry or the Minister of the  
2 Environment is not an opposed party and, in my  
3 submission, that simple fact takes the Minister outside  
4 the ambit of the OFIA motion and no order should be  
5 made against my client in response to that motion  
6 because the whole rationale rests upon parties being in  
7 opposition.

8 Now, the third area that I want to deal  
9 with in this general matter of the OFIA motion is to  
10 record with the Board that, as a practical matter, we  
11 may well not be calling any evidence at all and we will  
12 likely not be in a position to decide that question in  
13 any final way until after the evidence of all the major  
14 parties has been completed or at least available.

15 In our submission there is no benefit to  
16 our standing up and saying: Me too. If the evidence  
17 is complete and, in our judgment, provides a sufficient  
18 basis for argument in support of the points we wish to  
19 make in argument, then there is simply no benefit to  
20 our putting people in the stand simply to say: Me too.

21 Now, the fourth area I want to come to  
22 within this second general area of my submissions is a  
23 submission which I make in the alternative. In my  
24 submission no order should be made against my client,  
25 in respect of my client as you have heard for the



1 reasons I have outlined in response to Mr. Cosman's  
2 motion, but I have to deal with the practical reality  
3 that I may not be successful in that submission and I  
4 do put this forward in the alternative.

5 If my previous submissions are not  
6 accepted, it is my submission that insofar as it  
7 relates to my client, Mr. Cosman's motion is simply not  
8 well founded. The law Mr. Cosman has cited applies and  
9 grew out of the situation where a specific  
10 administrative action is being contemplated against a  
11 specific company or individual and, typically, the  
12 cases relate to situations like licensing authorities:  
13 Advising a taxi owner or a professional that their  
14 license or accreditation was going to be withdrawn and  
15 the courts have consistently said that under those  
16 circumstances the parties who are subject to that kind  
17 of specific administrative action are entitled to know  
18 the case they have to meet. That's where that whole  
19 body of law grew up.

20 Now, Mr. Chairman, in my submission that  
21 is simply not the nature of these proceedings. We are  
22 involved in an entirely different process aimed at  
23 putting in place appropriate policy guidance in timber  
24 management in Ontario. This application is about how  
25 the applicant, the Ministry of Natural Resources,

1       should conduct the activity of timber management in  
2       relation to the Crown forests within the area of the  
3       undertaking. In my submission, the essential rationale  
4       of Mr. Cosman's motion is a request to grant the OFIA  
5       some special status in this hearing because their  
6       members are reliant on the flow of wood from those  
7       forests.

8               In my submission, there is no basis in  
9       law which would recognize any special status requiring  
10      all other respondents to set out all of their evidence  
11      prior to the OFIA calling its case. The OFIA has quite  
12      properly and candidly stated that it generally supports  
13      the applicant. In my submission, it is only fair,  
14      proper and in accord with the usual practice in these  
15      matters to have all of the evidence in support go in  
16      before requiring responding parties to set out their  
17      evidence.

18             Those parties are, after all, in the  
19      position of responding or reacting to the evidence  
20      called in support of the proponent. And, by  
21      definition, that can't fully be done until all the  
22      evidence in support is heard.

23             Now, my fifth submission in this area is  
24      simply to point out to the Board that the proposal  
25      being put forward by the Ministry of Natural Resources,

1 in our submission, fully meets any legitimate OFIA  
2 concerns as expressed in their motion. This is because  
3 at the end of the day it is not the evidence of the  
4 parties which will govern MNR's practice of timber  
5 management, it is the decision of this Board which will  
6 govern MNR's practice of timber management.

7 MNR's proposal would see all parties  
8 outline what they want in that decision prior to the  
9 OFIA calling its case. And the Board will appreciate  
10 my comments earlier I hope when I made it clear that I  
11 think the Board, in its reasons, if it sees fit to  
12 support this proposal, should make it clear that its  
13 expectation is that all parties will make a complete  
14 and comprehensive effort to put forward what it is they  
15 want at the end of the day because that, in my  
16 submission, is going to be the key in combination with  
17 MNR's evidence for the ability to scope, for the Board  
18 to grab hold of this thing and manage it in an  
19 efficient way.

20 And, as I say, it seems to us that the  
21 proposal does meet any legitimate OFIA concerns. If  
22 the OFIA finds some of the proposals that are put  
23 forward unpalatable or un reasonable, it will then have  
24 full and complete opportunity to marshal its evidence,  
25 to illustrate why the proposals suggested by any of the

1 parties make no sense or make perfect sense; they will  
2 know the decision that's being asked for and they will  
3 have a target at which to aim their case which, as I  
4 understand it, is basically what they are asking for.

5 THE CHAIRMAN: When are they going to do  
6 this, in argument?

7 MR. CAMPBELL: Well, they can do that --  
8 their complaint, as I understand it, is they are  
9 concerned they will not be able to judge what matters  
10 they have to deal with in evidence without having  
11 everybody's evidence first.

12 What I say is that that is -- that may be  
13 their problem but they have designed a very poor  
14 solution. The MNR proposal is a much better solution.  
15 It says: Before you call your evidence, all parties  
16 file a concise summary of what it is they want the  
17 Board to do at the end of the day and in the full light  
18 of that knowledge, OFIA can have no complaint that it  
19 doesn't know what people are asking for. It will know  
20 precisely what people are asking for and it can call  
21 its evidence to either support or reject those notions.  
22 They know what the decision is -- the potential  
23 decisions that they are facing and they can govern  
24 their case accordingly.

25 In my submission, that is a far better



1 solution to the problem they have identified than  
2 requiring everyone to put forward all of their evidence  
3 so early which, in my submission, would result in  
4 everyone preparing a whole lot of material which in the  
5 end would turn out to be quite irrelevant.

6 So it is our submission that in terms of  
7 any administrative action which may affect MNR's  
8 administration of the Crown forests, adopting the MNR  
9 proposal will give Mr. Cosman fair notice of the terms  
10 and conditions being sought. That may well in fact be  
11 more than he is in law entitled to but, if nothing  
12 else, it is our submission that the filing requirements  
13 proposed with respect to terms and conditions makes  
14 good procedural sense, are within the jurisdiction of  
15 the Board to order and, as I have said previously, meet  
16 directly the concerns raised by the OFIA.

17 THE CHAIRMAN: And are you in agreement  
18 with the suggested timing for that, prior to the  
19 completion of the Ministry's case?

20 MR. CAMPBELL: Yes, I am.

21 THE CHAIRMAN: and so that is to afford  
22 OFIA the opportunity from that to know supposedly what  
23 they have to meet before they call their case; is that  
24 correct?

25 MR. CAMPBELL: Exactly. And I am not as

1 concerned as Mr. Castrilli about the fact that may have  
2 to be done before the calling and cross-examination of  
3 the final few panels. It would be my judgment that it  
4 ought to be possible on the basis of the witness  
5 statements as we have been receiving them and the  
6 interrogatories to formulate, in a reasonable way,  
7 terms and conditions which address concerns arising out  
8 of that evidence. It may mean that, as a practical  
9 matter, the lists on the final few matters are a little  
10 longer than they would otherwise be, but if in light of  
11 the evidence and cross-examination the Board issued an  
12 invitation for people to withdraw any that they now saw  
13 as superfluous, that would afford Mr. Cosman the  
14 opportunity to withdraw unnecessary parts of his case.

15 I just don't see that as a big practical  
16 problem. It is the kind of thing that counsel deal  
17 with that all the time and there should be no  
18 difficulty dealing with it here.

19 THE CHAIRMAN: And would the terms and  
20 conditions of the parties in opposition be different,  
21 would you suggest, as a result of the OFIA's case being  
22 heard by them?

23 In other words, the terms and conditions  
24 you are asking them to formulate are based on the  
25 Ministry's case alone, not the evidence of the OFIA

1       which would come subsequently.

2                   MR. CAMPBELL:  It just seems to me, Mr.  
3       Chairman, again that we can't sit here today and design  
4       a perfect solution to everything.  That clearly might  
5       happen.

6                   I would suggest to you, however, that  
7       unless I completely misunderstand the nature of the  
8       case that OFIA is likely to put in, that their evidence  
9       might well focus on why certain suggested terms and  
10      conditions were not required or were inappropriate; in  
11      which case, if a party was persuaded of that point of  
12      view as a result of the OFIA's evidence, it is a simple  
13      matter to withdraw it.

14                  THE CHAIRMAN:  So the without prejudice  
15      aspect of it would cover that?

16                  MR. CAMPBELL:  Absolutely.

17                  THE CHAIRMAN:  Thank you.

18                  MR. CAMPBELL:  Now, Mr. Chairman, I would  
19      like to close simply by saying that you have a lot of  
20      sort of particular questions in front of you as a  
21      result of these motions, but I return to the theme that  
22      I closed my submissions on the first major part of my  
23      remarks with, which is basically that there is no  
24      reason that all procedural matters need to be decided  
25      now as a result of this motion.  We have got to

1 recognize that they can be raised again and they don't  
2 need to be settled all for all time right now.

3 In my judgment and in my submission, the  
4 proposal put forward by MNR contemplates the Board  
5 making some common sense rulings which could be  
6 adjusted, if necessary, once we see all the evidence  
7 and once we have a little bit more experience with  
8 attempts to scope and so on.

9 The critical factor arising out of all of  
10 these motions, in our submission, is to adopt that  
11 timetable, to get all of that evidence on the table by  
12 February 1st.

13 Mr. Chairman, unless the Board has any  
14 further questions for me, those are my submissions.

15 THE CHAIRMAN: Thank you, Mr. Campbell.

16 MR. CAMPBELL: Thank you, Mr. Chairman.

17 THE CHAIRMAN: Mr. Cosman, would you like  
18 to respond prior to the Ministry going?

19 MR. COSMAN: I have discussed this with  
20 my friend Ms. Murphy, Mr. Chairman, in that I may also  
21 be responding to her submission which I haven't heard  
22 yet in respect to the motion and it was agreed that she  
23 would proceed.

24 THE CHAIRMAN: All right. Just one  
25 moment, Ms. Murphy.



1                   Mr. Williams, your submission was  
2           submitted last week and was made part of the record and  
3           we were not contemplating at this point of going  
4           through your individual submissions at this time  
5           because many of the points raised by yourself have been  
6           covered by some others up to this point.

7                   MR. WILLIAMS: Mr. Chairman, I appreciate  
8           what you are saying, nor was it my intention in rising  
9           to speak to you at this point in time to suggest that I  
10          would re-introduce in a personal way the points of view  
11          that were expressed to the Board and, as I understand,  
12          recorded in evidence by way of letter in dealing with  
13          these motions that are still under discussion.

14                   My purpose on rising at this point in  
15          time, Mr. Chairman, was simply to request the Board an  
16          opportunity to briefly, and at what you would think  
17          would be the appropriate time, to advise the Board  
18          whether the position of the Federation remains constant  
19          after having had the benefit of hearing at least some  
20          of the arguments put forward here today, bearing in  
21          mind that our submission was made on the understanding  
22          that we were handicapped in not being able to be here  
23          in person to participate in the arguments and to have  
24          benefit of hearing argument by all parties.

25                   Unfortunately, I haven't had an

1 opportunity because the testimony is not yet available  
2 by way of transcript to have reviewed that to see  
3 whether our position would have changed or not and so I  
4 am going to have to rely simply on what remaining  
5 argument I hear this evening.

6 But I would like to have the opportunity,  
7 if I might, very briefly at the end to at least be able  
8 to advise the Board as to whether our position would  
9 have changed any of the basic positions we had taken in  
10 the matter based on having the benefit of that argument  
11 in hand.

12 And so it is with that in mind, Mr.  
13 Chairman, that I did want to request the Board the  
14 opportunity to briefly participate at some point before  
15 the evening concludes so that we would feel that we did  
16 not have to remain a silent participant in this  
17 process, given the importance of the issue before us.

18 THE CHAIRMAN: Okay, Mr. Williams. We  
19 are going to proceed and have Ms. Murphy put forth the  
20 Ministry's position, followed by Mr. Cosman and at the  
21 end, the Board is willing to allot you ten minutes to  
22 put forth anything that you may wish to put forward at  
23 that time.

24 We do not intend, however, to go into a  
25 subsequent round of all counsel responding to your

1 views put forward at that time. I appreciate the fact  
2 that you have not been here, I appreciate the fact that  
3 notwithstanding you have not been here, your position  
4 was put forward in writing at the appropriate time, we  
5 have heard argument on these submissions for all of  
6 last Thursday pretty well until we rose, and going on  
7 tonight, so we are not going to reopen it. We feel we  
8 have heard sufficient arguments on the various issues  
9 from various parties and, of course, we have before us  
10 your submission as well.

11 MR. WILLIAMS: I concur with the  
12 direction you are suggesting, Mr. Chairman. It would  
13 certainly respond to limited participation that I ask  
14 for at this time.

15 MR. COSMAN: Mr. Chairman, I just do wish  
16 to put on the record at this point - and I know that  
17 Mr. Williams was not here and didn't have the benefit  
18 of hearing the other argument or hearing also that Mr.  
19 Castrilli withdrew his motion in the face of proposal  
20 and so that the only motion before you to which a  
21 response is coming is my motion in effect at this point  
22 in time, plus the suggestions in the proposal.

23 And all I want to say is if Mr.  
24 Williams - and it may not be necessary - but if he  
25 raises something to which I at that time feel I have to

1       reply, I will rise. I know -- it may not be necessary  
2       but I do want to say if he raises something to which I  
3       as applicant feel a need to respond, I will be on my  
4       feet.

5                   THE CHAIRMAN: Well, Mr. Cosman, we are  
6       not going to deal with the formalities of whose motion  
7       technically is before us. I think there was a clear  
8       understanding amongst counsel last week that regardless  
9       in the form in which the motions were put forward, we  
10      know what issues we are dealing with.

11                  MR. COSMAN: I was just talking about  
12      if something new arose I have a clear right under the  
13      Board's rules and practice to respond. That is all I  
14      am saying. It may not be necessary, but I do want to  
15      indicate that to you.

16                  MR. WILLIAMS: I am sure it won't be  
17      necessary, Mr. Chairman.

18                  MR. COSMAN: I wanted to state it because  
19      you didn't get an opportunity to hear from anybody  
20      else, that is at all.

21                  THE CHAIRMAN: Well, we are not reopening  
22      all of the argument.

23                  MR. COSMAN: I won't do that.

24                  THE CHAIRMAN: So you may rise if you  
25      want to respond and you may also be forced to sit down



1       shortly afterwards.

2                   MR. COSMAN:  I will not raise any new  
3       argument.

4                   THE CHAIRMAN:  Very well.

5                   MR. WILLIAMS:  I appreciate the  
6       accommodation, Mr. Chairman.  I just wanted to say that  
7       on the clear understanding and again appreciation of  
8       the fact that my letter was received in evidence and,  
9       as I understand, will be recorded verbatim in the  
10      evidence in the transcript and not simply as an example  
11      thereto.

12                  THE CHAIRMAN:  Is that correct?

13                  THE REPORTER:  Yes.

14                  THE CHAIRMAN:  Yes.

15                  MR. WILLIAMS:  Thank you, Mr. Chairman.  
16      I will await when you suggest would be the appropriate  
17      time for me to --

18                  THE CHAIRMAN:  Very well.

19                  Ms. Murphy?

20                  MS. MURPHY:  Mr. Chairman, I hope the  
21      Board is feeling a little more lively, than I am at this  
22      point in the day and that is no reflection on Mr.  
23      Campbell's oratory.

24                  THE CHAIRMAN:  You have been told, Mr.  
25      Campbell.

1 MS. MURPHY: Mr. Chairman, the Canadian  
2 Environmental Law Association and the Ontario Forest  
3 Industry Association have come to the Board with a  
4 problem and we thought it best to try to find a  
5 practical solution to the problem.

6 In order to avoid lengthy argument, we  
7 consulted with counsel as best we could and we made a  
8 written proposal which we provided to everybody. And,  
9 again, attempts to find expeditious ways to resolve the  
10 issues don't seem to have met with a lot of success.  
11 Although it was my understanding that we had some  
12 general good feelings about the proposal, at this stage  
13 argument has gone over five and seven hours on a matter  
14 of essential agreement.

15 And I must -- I would like to point out  
16 it is not my favorite example of a situation where  
17 responsible counsel cooperate in order to assist the  
18 Board. The bottom line is still, I would suggest, the  
19 question: What procedure will enable this Board to  
20 make the decision before it in a well informed and  
21 efficient way while treating all parties fairly. That  
22 is the question, and the proposal was put forward and  
23 those are essentially the issues I would like to deal  
24 with in reply, are some questions raised directly with  
25 respect to this proposal, primarily questions from the

1 Board.

2 Generally speaking, I would suggest that  
3 what you heard was that the proposal is generally  
4 acceptable as long as it imposes obligations on the  
5 Ministry of Natural Resources; some parties agree that  
6 they should have obligations too and others do not. In  
7 addition, Mr. Castrilli withdrew his motion and then  
8 argued it anyway and Mr. Hunter made a new motion on no  
9 notice to anyone.

10 The issues that I would like to speak to  
11 are the following five questions:

12 1. Will it take until January to put in  
13 all of Ministry of Natural Resources witness statements  
14 and supporting documentation;

15 2. Should the Ministry be required to  
16 produce in addition a longer written summary;

17 3. When should the Ministry of Natural  
18 Resources provide a concise summary of terms and  
19 conditions as proposed;

20 4. When should other parties provide  
21 their draft terms and conditions as proposed; and,

22 5. What is the effect of this discussion  
23 about the right of reply on this hearing.

24 I would suggest those are the five  
25 substantive matters that should be considered and those

1 I would like to speak to.

2 I also have a couple of words to say,  
3 very short words, in response to Mr. Castrilli's  
4 argument and with respect to Mr. Hunter's motion  
5 without notice.

6 With the first question, I have posed the  
7 question this way: Will it take until January to put  
8 in all of the Ministry Natural Resources witness  
9 statements and supporting documentation. And, of  
10 course, Mr. Chairman, my answer to that is yes. I have  
11 listened carefully to what has happened over the last  
12 couple of days or spread over two days and I would  
13 suggest that perhaps we have contributed to some of the  
14 confusion here and that is because it appears that we  
15 have not made it sufficiently clear what it is we are  
16 attempting to do at this point in time in producing the  
17 documentation that is now in witness statements.

18 In an earlier motion raised by the Board  
19 there was some discussion about the issue of canned  
20 evidence, so to speak. As you recall, sir, we opposed  
21 the motion, that oral evidence-in-chief be essentially  
22 limited to a very short period of time, and as did  
23 others and in the end, the Board ruled that there would  
24 not be a Board-imposed limit on oral evidence.

25 However, we have not ignored the issue



1       raised by the Board. We have in fact changed the  
2       format of our written evidence in an attempt to provide  
3       the evidence of all witnesses in a written report-style  
4       format. It was our view that in response those issues  
5       raised we should find a way to see if we could do it  
6       better and we have hoped - and we will only learn from  
7       history - that the result of that change would be that  
8       evidence-in-chief would be expedited.

9                       Now, although we can't obviously  
10       undertake that evidence-in-chief for each panel will  
11       take a specific number of days, it is our view that  
12       producing the information in this written format should  
13       significantly assist in that. What that does mean, Mr.  
14       Chairman, is that with respect to the witnesses who  
15       have been working on their material, we have asked them  
16       to stop, go back and turn their material into prose and  
17       they are working on that. That takes time, it takes  
18       time for the witnesses, it takes time for counsel and  
19       it is on the basis of that that we have made our  
20       projection, and our projection is that it will take  
21       until the month of January to complete and produce that  
22       material in a written format.

23                      Certainly where material is available  
24       earlier, we will make it available earlier, but we just  
25       simply can't make promises that we aren't sure that we

1 can keep.

2 But I appreciated when we dealt with this  
3 issue the other day that there was some surprise that  
4 there was some written material that was still being  
5 worked on. And I thought it might be wise to advise  
6 you why that is.

7 Now, Mr. Chairman, you raised with my  
8 friend the issue of the interrogatories and, if I might  
9 remind you, if you have a copy of my letter and I have  
10 a copy of my letter. This was something I did speak  
11 to, the issue of interrogatories and when they would be  
12 produceable looking at this new proposed schedule.  
13 Just to show you, first of all, where it is spoken to  
14 in the proposal. First of all on page 2, if you look  
15 at month of September, and our proposal was: MNR  
16 provide statement of evidence for Panels, 8, 9 and 10  
17 identifying the 30 to 40 day periods for receiving  
18 interrogatories. And those are going out in a  
19 staggered fashion.

20 The next point in the witness  
21 statement -- in the letter where I refer to it is on  
22 the next page and what we had said on the next page:  
23 With respect to the month of December MNR provides  
24 statements of evidence for Panels 11, 12, 13, 14 in  
25 that month with proposed dates for receipt of

1       interrogatories. And when I spoke to those two parts  
2       of the procedure, I explained that I had put that in  
3       because Mr. Castrilli had pointed out that there was a  
4       concern that these might, you know, all show up at  
5       once.

6                       We are aware, people can't deal with  
7       everything at once. We are also aware that the way  
8       things are set up now, when people receive the witness  
9       statements they don't know how long that 30 to 40 day  
10      period is. So what we have been doing is writing in  
11      the covering letter that we have been sending out to  
12      people a request that they have their interrogatories  
13      in by a specific date so that everyone who receives the  
14      witness statement has something to shoot for.

15                      Again, as I said, we haven't turned any  
16      back, and it certainly wasn't our intention to provide  
17      four witness statements and require people or ask  
18      people to give interrogatories on all four at once. I  
19      had also suggested that if there was some concern it  
20      might -- the Board might consider having us discuss the  
21      dates through Mr. Mander with the Board. In any event,  
22      we are aware of the situation and it is certainly not  
23      something that we would -- it wouldn't be in anybody's  
24      best interest to try and do them all at once.

25                      The second issue I told you I would like

1     to speak to is that question whether MNR should be  
2     required to produce, in addition to the witness  
3     statements, a longer written summary. It was raised by  
4     the Chair, I believe, and again with respect to that  
5     one, in my respectful submission the answer should be  
6     no. I advised you at the time, Mr. Chairman that you  
7     raised it, that I had some concern about it and that  
8     was it was my impression that the parties want the  
9     actual material rather than a summary. And I did speak  
10    to a few other people about it, including Mr. Campbell,  
11    but certainly a couple of the other counsel who didn't  
12    speak to the matter here.

13                 In any event, the document itself would  
14    have no real status, it wouldn't be part of the  
15    evidence, it wouldn't really advance matters. The most  
16    important thing to the Board and to the parties is to  
17    have the witness statements and we would like to  
18    concentrate our efforts in that direction and that's  
19    what the proposal provides for.

20                 The next issue then was: When should MNR  
21    provide the proposed concise summary of terms and  
22    conditions. Now, we have said earlier - and I would  
23    like to say again - we are not asking today for a fixed  
24    date for that. It is our view that there is not  
25    sufficient information to make a proposal and nor have



1 people, in any view, given sufficient thought to what  
2 they actually need in order to make a submission on  
3 that matter. It is the principle that's important.

4 It should not be assumed that the  
5 Ministry of Natural Resources has not advised the Board  
6 or the parties what it is looking for. That is in the  
7 Environmental Assessment Document, it is in the  
8 government review document which is Exhibit 5. There  
9 are matters that are dealt with in exhibit -- I believe  
10 it is Exhibit 5A, that's the supplementary part to the  
11 government review document. There are a number of  
12 things there. It certainly isn't concise, but the  
13 material is there.

14 Now, what was of interest to me when we  
15 discussed the matter last week and when some of the  
16 other parties were putting in -- making their  
17 submissions, it appeared to me that I had made an  
18 assumption in writing the letter that perhaps was  
19 illfounded and it came to my attention when the  
20 Chairman made a comment -- the Chairman commented that  
21 in the normal course this step, the step in which the  
22 moving parties or the proponent writes down in a  
23 concise form the step -- the things that they are  
24 asking for, you pointed out that that normally happens  
25 at the end of the whole piece.

1                   That's true. The point in time at which  
2                   the proponent and the other parties in the hearing  
3                   normally stand up and say: Now, we are going to tell  
4                   you in a concise form what we want, happens normally at  
5                   the end of the whole process. What we are suggesting  
6                   here would advance that, would have all of us be  
7                   required to do that step earlier than we would have  
8                   been required in the normal course in order to use it  
9                   as a lever, in a sense, in order to use that part of  
10                  the process to assist us to resolve issues.

11                  Of course in putting together these  
12                  documents they would have to be, in a certain sense as  
13                  Mr. Campbell points out, without prejudice, but again  
14                  people should, in our view, be encouraged to make a  
15                  real serious effort in writing some documentation to be  
16                  of assistance.

17                  Now, one of the things that seems to have  
18                  caused some confusion - and perhaps I could speak to  
19                  that for a moment - is this question: Should this  
20                  process be initiated after Panel 15. I made the  
21                  comment when I was discussing this procedure that while  
22                  we weren't asking for a fixed date at this time, it  
23                  seemed reasonable to me at the time that we start that  
24                  after Panel 15 and perhaps I can explain why and where  
25                  that takes us.

1                   The point simply was this: Mr. Castrilli  
2           had suggested actually before we got here to argue the  
3           motion and also suggested during his motion that he  
4           wanted all interrogatories and undertakings up to some  
5           particular date or up to the end of a certain piece of  
6           evidence, I would suggest, at some point in time before  
7           he submits his draft terms and conditions. He had said  
8           that to us, that in order to write his draft terms and  
9           conditions he was interested in seeing all of the  
10          evidence up until some unknown, unspecified point in  
11          time.

12                   Now, of course, that seems perfectly  
13          reasonable. It also suggests that he wants complete  
14          information on a certain amount of material prior to  
15          undertaking the effort of writing this proposal. It  
16          simply seemed, without any further discussion, that in  
17          order to sort of exemplify to you what was in mind that  
18          Panel 15 might be an appropriate cut-off time.

19                   Our suggestion is simply this, however:  
20          That that actual issue, when the appropriate time is,  
21          cannot really be dealt with until people have thought  
22          through what they want and people have had an  
23          opportunity to look at all of the material that is  
24          being presented by the Ministry. So our proposal is  
25          that upon receipt of all of that material and upon

1 referring on February 1st, at some time after that,  
2 that would be the appropriate time to deal with that  
3 issue.

4 And certainly if the parties feel that  
5 the production of that material is useful to them at an  
6 earlier time, that's not a problem. In fact, that same  
7 issue though arose when you look at the question -- and  
8 the next question: When should other parties provide  
9 their draft terms and conditions.

10 Now, again, I understood Mr. Campbell to  
11 be saying in order to write draft terms and conditions  
12 people may want to have seen Panel 15. Maybe it is at  
13 this stage that they are interested in seeing Panel 15  
14 before. Again, that is something I suggest that they  
15 might want to discuss with you once we reconvene.

16 In any event, as a general rule, it seems  
17 that with some exceptions in any event, the parties  
18 seem to be prepared to provide such documentation with  
19 the exception of perhaps Mr. Hunter who seemed to be  
20 shocked and appalled that we suggest that he do this.

21 I would suggest that there is no point in  
22 MNR advancing the time for preparing a draft set of  
23 terms and conditions without the other parties  
24 responding. That's really what it is all about. And  
25 it is really true, Mr. Chairman, we are in a position



1       that we do not have specific information about what  
2       other parties want and it is not from lack of trying.

3               I don't intend to give you a lot of  
4       history about that, but I would suggest to you that Mr.  
5       Hunter in his submissions gave you the perfect example  
6-      of what I am talking about. Mr. Hunter directed you to  
7      my letter, page 2, and he read from page 2, the third  
8      paragraph. Unfortunately I don't have a transcript,  
9      but in any event, I think you will recall on page 2 he  
10     read the third paragraph:

11               "Simply put, the real problem appears to  
12               be that all parties, including the  
13               Ministry of Natural Resources, want to  
14               have a clearer understanding of the  
15               issues in dispute and the proposed  
16               resolution to them."

17               Now, in my notes - and again I don't have  
18      the transcript - but in my notes I understood Mr.  
19      Hunter to say: Well, we have that and I understood him  
20      to direct us to the submissions of Mr. Charles Fox, his  
21      client, during presubmission consultation. And I  
22      understood him to tell us that if I looked in the  
23      transcript I would find Mr. Fox saying:

24               "We will seek substantial changes in the  
25               planning process."

1                   Well, I have two problems. First of all,  
2   I haven't found that in the transcript of the  
3   preliminary hearings, although I may have misunderstood  
4   Mr. Hunter, but the other problem is I am not surprised  
5   to hear the submission, we will seek substantial  
6   changes in the planning process, but what I am supposed  
7   to do with that I have no idea and that's the problem.  
8   We have no way to respond to that, that isn't something  
9   that helps us to resolve issues.

10                  So, again, I would suggest that other  
11   parties should be asked to respond at a date to be  
12   fixed at the same time as the date is fixed for the  
13   Ministry to provide its draft terms and conditions.

14                  THE CHAIRMAN: Are you conceding that the  
15   Ministry's terms and conditions would be out ahead of  
16   any other party doing the same thing?

17                  MS. MURPHY: Oh yes, that's our proposal.

18                  THE CHAIRMAN: Very well.

19                  MS. MURPHY: Now, the fifth matter I said  
20   I wanted to speak to - and this is something that I  
21   have general concern about - this is the question:  
22   What is the effect of the discussion about a right of  
23   reply, what is the effect of that on this hearing.

24                  Mr. Campbell pointed out it was his view  
25   people should be encouraged to give notice of specific

1 events and I understood that generally many of the  
2 counsel were making similar suggestions, that if  
3 specific events are discussed and there isn't any  
4 notice that there would some kind of - to use their  
5 words - "a limited right of reply". I am concerned  
6 that we may be confusing things by calling it the right  
7 of reply or whatever and it imports a lot of procedural  
8 concerns and so forth, when really what we are talking  
9 about is essential fairness.

10 I would suggest, no matter what you look  
11 at, any person taken by surprise by unanticipated  
12 allegations has a right to respond. That's a fairly  
13 simple and straightforward proposition. The reason  
14 that I have some concern about it is: How do you  
15 balance that with the need to have an expeditious  
16 hearing. And I am concerned because I look at the  
17 question: How can this hearing be expedited if persons  
18 who are intending to make such allegations do not give  
19 notice and then suggest that the matter can be remedied  
20 by adding more time at the end of the hearing. I would  
21 suggest that the responsibility to help to expedite the  
22 hearing belongs to all you of us.

23 There is another matter that was raised  
24 in relation to that issue, and that although it doesn't  
25 speak directly to the issue of a right of reply it is

1 something I am concerned about.

2 Mr. Castrilli cited his interpretation of  
3 procedures used at the Royal Commission, I believe, on  
4 Air Safety and he advised that people at that Royal  
5 Commission tried to deal with a similar issue. I am  
6 certain that's true, but this is the second time that  
7 Mr. Castrilli has raised before the Board procedures  
8 that were used at a Royal Commission, a public enquiry  
9 or something of that sort and then has advised that  
10 whatever happened there is directly analogous "to  
11 what's happening at this hearing".

12 Now, Mr. Freidin and I have been involved  
13 in public enquiry and public enquiries and Royal  
14 Commissions do good work, but they are not the same  
15 kind of thing as this hearing, they are not in any  
16 sense directly analogous. Royal Commission, public  
17 enquiries make recommendations, they are not  
18 decision-making bodies. This is a decision-making body  
19 and it seems to me that, at the very least, that should  
20 be pointed out when looking at comparing procedure.

21 THE CHAIRMAN: But procedural fairness  
22 surely has to apply to decision-making bodies as well  
23 as non-decision making bodies?

24 MS. MURPHY: More so. Yes, indeed. More  
25 so is the point. In any event, our proposal was meant



1 to find a practical resolution to the problem. I  
2 suggest that it does that and I imagine if things fall  
3 out and have to be dealt with later it is regrettable,  
4 but it would seem to me wise to find ways to avoid  
5 that.

6 Now, with respect to those two matters I  
7 raised, Mr. Castrilli's argument and Mr. Hunter's  
8 motion. I would like to clarify, first of all, our  
9 proposal was not intended in any sense to suggest that  
10 we agree with Mr. Castrilli's grounds insofar as they  
11 relate to compliance with the Environmental Assessment  
12 Act. I would suggest to you, sir, the bottom line is  
13 that the motion was withdrawn and, therefore, it is not  
14 necessary to put your mind to it. I don't know that it  
15 is an issue of jurisdiction or anything else of that  
16 nature. It is not an issue relevant to the proposal  
17 that's here.

18 Mr. Castrilli advised specifically that  
19 the motion was withdrawn and, for that reason alone, it  
20 is unnecessary to go further because it is essentially  
21 moot. In addition, as you are well aware, as a matter  
22 of practice decision-makers don't make decisions on  
23 matters that are not squarely before them or required  
24 to be made in order to resolve the issues.

25 Now, that said, I would prefer to leave

1       it at that, unless you have some questions. Thank you.

2                       Finally then, with respect to Mr. Hunter.

3       And I might point out, Mr. Hunter -- it was my

4       understanding as well that Mr. Hunter began by moving

5       that the Ministry of Natural Resources be required to

6       put in all of its evidence-in-chief within a fixed

7       period of time. Now, looking at the transcript may

8       show that I am wrong about that as well, and it may

9       well be that I thought I heard that because I have

10       heard that from him before. So that suggestion -- so I

11       don't know, in any event

12                      THE CHAIRMAN: Well, we understood

13       within a fixed period of time meant a limitation on the

14       number of days per panel which, extrapolating over the

15       number of panels, would mean that the Ministry would

16       take only about 20 days to put in its case.

17                      MS. MURPHY: Overall.

18                      THE CHAIRMAN: But I do not think we

19       understood that that would be 20 consecutive days and

20       the Ministry would put in all of its direct evidence at

21       once prior to cross-examination or re-examination with

22       respect to each individual panel.

23                      MS. MURPHY: Well, whether he started

24       there or not, Mr. Chairman, it is certainly clear that

25       after at least some questioning from the Board he did

1 go on to say -- or to make it clear that it was -- he  
2 understood that there was then to be cross-examination  
3 and re-examination at least between each of these  
4 panels.

5 I think that sort of developed as the  
6 discussion went along.

7 THE CHAIRMAN: Right, with no limitations  
8 in terms of time--

9 MS. MURPHY: On cross-examination or  
10 re-examination.

11 THE CHAIRMAN: --on either  
12 cross-examination or re-examination.

13 MS. MURPHY: Right. I also understood  
14 that he went on to say that this limitation would  
15 somehow also apply to his client in that he would - and  
16 my quote was - undertake to negotiate a time.

17 THE CHAIRMAN: No. The Board asked  
18 simply if you were suggesting a time limitation of two  
19 days per panel for the Ministry of Natural Resources'  
20 panels, would you, on behalf of your client, accept a  
21 similar time limitation. In other words, no more than  
22 two days in direct oral evidence-in-chief for any panel  
23 that he wishes to call or any witnesses that he wishes  
24 to put in the stand.

25 MS. MURPHY: And you understood his

1       answer to be...?

2                       THE CHAIRMAN: His answer to be that he  
3       would accept a similar limitation.

4                       MS. MURPHY: Well, I would ask that we  
5       take a close look at transcript because I think you  
6       will find that perhaps the second or third time he  
7       answered the question he said -- he undertook to  
8       negotiate a time as being the answer. In any event...

9                       THE CHAIRMAN: Okay. We will have to  
10      check the transcript. That is not what my recollection  
11      was.

12                      MS. MURPHY: In any event, the points I  
13      want to make are fairly similar. First, the allegation  
14      that the Ministry of Natural Resources is taking  
15      inordinate amounts of time to put in evidence-in-chief  
16      is not founded in fact and that Mr. Hunter didn't even  
17      put forward any facts to base that on.

18                      Instead he said that he was basing it on  
19      a rumour. And although we have enough difficulty with  
20      counsel putting in evidence, I think it is probably not  
21      wise to make decisions based on counsel putting in  
22      rumours, most particularly when Mr. Hunter asked me  
23      directly that question before coming here and I told  
24      him that there was no way that our evidence-in-chief  
25      was going to take six to nine months. He asked me that



1 directly and I responded to him. And I don't know  
2 where the rumour that he is relying on came from.

3 Secondly, the other thing that is very  
4 important is to keep in mind that whether the evidence  
5 goes in in oral or written form, it still has to go in  
6 and obviously here we are looking at putting it in in a  
7 combination of both. But it still has to be put before  
8 the Board.

9 I think Mr. Taylor probably said  
10 everything clearer and more succinctly than anybody  
11 else here the Chamber of Commerce. But Mr. Taylor told  
12 you that it was important to get the information, and  
13 that you are going to have to do it one way or another.

14 And I do have a little difficulty - and we  
15 will have to take a look at that transcript - with the  
16 position that his client would be able to do whatever.  
17 It seems to me directly contrary to the position that  
18 was taken when this issue was raised earlier and deal  
19 with earlier in the Board's own motion on canned  
20 evidence.

21 In any event, again, the motion was made  
22 with no notice. It is our view that there is no basis  
23 in fact or practical application for the matter and  
24 that it would be improper, without notice and an  
25 opportunity to re-argue, based on whatever new facts

1 are available, to consider the motion at all.

2 Therefore, Mr. Chairman, and Board, we  
3 would suggest the resolution of the issue should be the  
4 Ministry of Natural Resources' proposal to put in all  
5 written documentation on the terms and at the times  
6 proposed as acceptable, that the Ministry of Natural  
7 Resources provide draft terms and conditions and other  
8 parties respond with draft terms and conditions as  
9 proposed, the time to be fixed after the hearing  
10 reconvenes in February, and that all parties make their  
11 best efforts to expedite the hearing by making notice  
12 of their allegation in a timely way.

13 And those are all the submissions I have  
14 to make, sir.

15 THE CHAIRMAN: Thank you.

16 Thank you, Ms. Murphy.

17 Mr. Cosman?

18 MR. COSMAN: Mr. Chairman, members of the  
19 Board, it is I realize 6:45 p.m., and I will do my best  
20 to expedite this argument.

21 I do feel I have to respond to a number  
22 of the submissions made by various counsel and I will  
23 follow the order in which those submission were made by  
24 starting with Mr. Castrilli.

25 And I adopt Ms. Murphy's comment with

1       respect to the distinction between the Dubin Enquiry  
2       and this particular proceeding and there are a number  
3       of reasons for that.

4                       Mr. Castrilli, you will recall, suggested  
5       that that was a multi-party proceeding and perhaps  
6       should be looked to as a model. That, as Ms. Murphy  
7       said, was a Royal Commission Enquiry by Justice Dubin  
8       into air safety with the airline companies interested  
9       in air safety being analogous to the industry members  
10      who are here before you.

11                     And Mr. Castrilli informed you there was  
12      a limited right of reply given to the parties who  
13      appeared and he conceded that perhaps my clients should  
14      have a limited right of reply in this proceeding.

15                     There are four -- or rather, three  
16      reasons I advance as to why that enquiry is an  
17      inappropriate model. One, a Royal Commission is not  
18      making a decision that affects the rights of parties.  
19      As Ms. Murphy said, it is a body that makes a  
20      recommendation only.

21                     Secondly, a Royal Commission hearing is  
22      not a quasi-judicial proceeding, the proceeding before  
23      you is; it is adversarial, it is a quasi-judicial  
24      proceeding. Mr. Justice Dubin in his report described  
25      it as non-adversarial.

1                   Thirdly, as a matter of procedure, the  
2     Dubin Enquiry had legal counsel, Mr. John Sopinka as he  
3     then was, who led all of the evidence or led the  
4     evidence - not all of it - but led the evidence on  
5     behalf of the Enquiry and presented the case to the  
6     Commission. In this proceeding the parties  
7     participating each lead their own evidence and present  
8     their own case.

9                   But even apart from these distinctions  
10    between the Dubin Royal Commission Enquiry and this  
11    particular proceeding, I have reviewed the report and  
12    discussed it with counsel who appeared and I can tell  
13    you that the Dubin Commission Enquiry afforded the  
14    parties before it with (1) prior notice of the case  
15    they had to meet; and, (2) a full right of reply to the  
16    case presented by Commission counsel.

17                  Reply was not limited, I am advised,  
18    except to the extent that all replies were limited to  
19    the matters raised in the case made against a party.  
20    Limited right of reply is a confusing term in law  
21    because reply by its nature is limited.

22                  With respect to the Dubin Enquiry, in  
23    certain cases a formal notice of allegations was  
24    presented in advance of a party's presentation of the  
25    case where allegations of misconduct were made. In all



1 cases -- secondly, in all cases parties were advised by  
2 counsel to the Enquiry in advance of the hearing in any  
3 location what allegations were going to be made and  
4 what witnesses were going to be called. This was done  
5 informally and then again in the opening statements of  
6 Commission counsel before Commission counsel called  
7 evidence. And, thirdly, the parties had a right to  
8 cross-examine and subsequently had the right to reply  
9 fully to the case that was presented against them.

10 So if one wants to use an analogy, Mr.  
11 Chairman, Mr. Sopinka and Justice Dubin adopted a  
12 procedure in that Royal Commission hearing that  
13 satisfied the legal requirements of fairness, being  
14 both advanced notice to a party of allegations that  
15 were to be made against that party, and a full right of  
16 reply to the evidence that was presented against that  
17 parties' case.

18 And that, Mr. Chairman, and as you noted,  
19 was a matter where -- or perhaps I should say, Ms.  
20 Murphy raised, was a Royal Commission Enquiry where the  
21 legal requirements of procedural fairness are less than  
22 in a quasi-judicial proceeding such as the hearing  
23 before you. So in a hearing where there are lesser  
24 rights both advance notice of the allegations that had  
25 to be met were given and a full right of reply. And I

1 say to you, Mr. Chairman, that even if that Enquiry  
2 hadn't afforded the parties such rights, you would  
3 still be obliged to do so.

4 Secondly, Mr. Chairman, the second point  
5 to which I wish to reply from Mr. Castrilli's argument.  
6 He stated the objection to our motion by saying that we  
7 were seeking discovery and in administrative law there  
8 is no right to discovery and he quoted from DeSmith;  
9 that was his argument.

10 This objection misapprehends the relief  
11 we are seeking. That rule, that is the rule that there  
12 is no right to discovery in administrative law, must be  
13 considered together with the overriding principle of  
14 administrative law that a party has a right to know the  
15 case to be made against it and which will affect its  
16 interests. The learned authors of Jones and DeVillers  
17 in their book Principles of Administrative Law show  
18 that Mr. Castrilli's argument does not hold water.  
19 Those authors say at page 210 - and I am going to come  
20 to Mr. Campbell's point about multi-party proceedings  
21 being different - but those authors say:

22 "The courts have consistently held that a  
23 fair hearing can only be had if a person  
24 affected by the tribunal's decision  
25 knows the case to be made against his

1 position. Only in this circumstance can  
2 he correct evidence prejudicial to his  
3 case and bring his own evidence to prove  
4 his position. Without knowing what might  
5 be said against him, no one can properly  
6 present his case."

7 This is not a question of pre-hearing  
8 discovery of documents or persons, this is a question  
9 of basic fundamental justice.

10 Thirdly, Mr. Castrilli's third argument.  
11 He made a lengthy argument to the effect that the  
12 rights that he was seeking by his motion stating  
13 that -- were different. He wanted to show that the  
14 statutory basis for his remedy was different in order  
15 to demonstrate that the relief we are seeking is not  
16 helped by his arguments. And, with great respect, I  
17 don't see the relevance of that argument. Whether he  
18 has the right to a certain remedy does not determine  
19 whether another party has a right to a certain remedy.

20 Mr. Castrilli made the further argument  
21 by really a bald statement that there were no rights in  
22 statute or common law for the relief that we are  
23 requesting and my reply to that is as follows:

24 1. The common law and statute law both  
25 support my position. Firstly, no authority from any

1 statute was suggested to override the legal principle  
2 that I have cited. In fact, Mr. Castrilli in his  
3 arguments did not challenge that principle. Mr.  
4 Campbell did, in a certain way which I will address  
5 subsequently. But coming back to Mr. Castrilli's  
6 argument, I say that the common law imposes the  
7 requirement of advance prior notice of the case that my  
8 clients have to meet and there are no statutory  
9 provision that conflicts with that.

10 Furthermore, as this Board well knows  
11 from its experience and practice, that Section 8 of the  
12 Statutory Powers Procedure Act requires particulars in  
13 advance of the hearing, not in advance of a party's  
14 presentation of its case, if there are to be  
15 allegations of either impropriety - impropriety by my  
16 conduct or lack of competence now, so we are not  
17 talking about that. No notice was given in advance of  
18 the case, so I assume no such allegation is forthcoming  
19 of either incompetence or impropriety. We are asking  
20 for something more, we are asking to know what it is  
21 that we should address our evidence to meet, what is  
22 the case against the position of our clients?

23 Now, the next point is that the Board's  
24 own Rules enacted pursuant to the Environmental  
25 Assessment Act wisely permit the Board to order what we



1 are asking, and that is: Rules 33(1) and 33(2) which  
2 say that: The Board may, on its own motion or at the  
3 request of a party, order that witness statements be  
4 exchanged; and sub (2): When those statements are  
5 ordered to be exchanged is within the discretion and  
6 subject to an order by the Board. So that the Board's  
7 Rules really address the fact that it may do so.

8 THE CHAIRMAN: Mr. Cosman, having said  
9 all that you are saying, how will you be prejudiced if  
10 you were in fact given a right of reply for a matter  
11 for which you were not given notice that arose during  
12 the course of the hearing and you did not have a proper  
13 opportunity because of that lack of notice to  
14 specifically address the allegation?

15 If in fact you are given a right of reply  
16 to address that allegation subsequently, where is the  
17 unfairness in terms of you not being able to address  
18 those concerns?

19 MR. COSMAN: Frankly, Mr. Chairman, if we  
20 had a right of reply that prejudice would be overcome.

21 THE CHAIRMAN: So you will concede that  
22 if there were some form of reply to something -- a  
23 specific allegation for which you did not have notice,  
24 that would overcome, in your client's view, any  
25 unfairness?

1                   MR. COSMAN: You put it slightly  
2 differently the second time, because the problem comes  
3 back to: "specific allegation", and perhaps I can  
4 address that even though it is out of order in my  
5 argument.

6                   If we are talking about, as the example  
7 that was used the other day, a bulldozer did this on a  
8 certain day - the incident question - well, that is one  
9 thing and I submit that is not sufficient and does not  
10 go far enough. If my friends who have indicated that  
11 they are opposing this approval are saying that  
12 industry practice in some way, or certain industry  
13 practices are inappropriate - and if you use the  
14 language I have sought, or even the language that Ms.  
15 Murphy has proposed - that if they are suggesting that  
16 certain practices are unsound environmentally, I can't  
17 be restricted when I stand up, not having advance  
18 notice of what they are saying, and they say: Ah-ah we  
19 are talking here about a right of reply for a specific  
20 bulldozer on a certain day going too close to a lake.  
21 That is not what we are talking about.

22                   So if it is understood that the right to  
23 know the case you have to meet includes the right to  
24 know the kinds of allegations that are going to be  
25 presented, then that is fine. But the problem is the

1 language of specific allegation.

2 THE CHAIRMAN: Okay. Let's step back a  
3 moment.

4 MR. COSMAN: All right.

5 THE CHAIRMAN: Is it your position that  
6 as a party substantially in support you would normally  
7 not be entitled to a right of reply--

8 MR. COSMAN: You have to determine  
9 these --

10 THE CHAIRMAN: --other than being the  
11 proponent?

12 MR. COSMAN: Well, no, I don't agree with  
13 that necessarily, it depends upon the nature of the  
14 proceeding. In this particular proceeding -- and in  
15 determining these administrative law questions, as you  
16 well know, Mr. Chairman, you have to look at the nature  
17 of the particular proceeding that is being considered,  
18 because in certain proceedings respondents may or may  
19 not be affected in ways that affect their legal and  
20 proprietary rights.

21 As I have indicated, at the end of the  
22 day you will make a decision which could conceivably be  
23 saying to my clients: Do this or do that. If my  
24 clients may have evidence to put before you which may  
25 be very helpful to that decision of yours which,

1       because it doesn't know the case that is going to be  
2       made against it, is not going to be in a position to  
3       put that evidence before you, except to say on a  
4       certain -- to respond by saying on a certain day the  
5       bulldozer in respect of a certain incident was a  
6       runaway bulldozer, I mean that is not giving me and  
7       giving our clients the rights that they need and to  
8       which they are entitled in law.

9               Perhaps I can deal with this question of  
10       notice and I am going to -- let me address even further  
11       and more specifically the points that you have raised.

12              Another point made by Mr. Castrilli and  
13       supported by Mr. Hunter is that we are getting notice  
14       by cross-examination and by documents filed in the  
15       course of cross-examination together with the opening  
16       statements and I say to you that no where in law does  
17       this constitute advance prior notice of the case my  
18       client has to meet.

19              First of all, as we saw when we addressed  
20       it, the opening statements lacked the particulars and  
21       specifics that we need to present our case. Mr. Hunter  
22       said frankly, when he was asked by you, when we would  
23       hear about the cases or examples that he had alluded to  
24       in his opening and he said when he called his evidence.  
25       This is, as you know, after the OFIA case.



1                   And as far as cross-examination goes,  
2           there are three comments. Firstly, it is not clear  
3           where certain cross-examination is going, we can't be  
4           left to guess in order to try to determine what our  
5           case -- what is the case we have to meet. Secondly, in  
6           some of the cross-examination you have everything under  
7           the sun being challenged and even if we can devine  
8           where we think someone is going, or why he is filing a  
9           document that may be a historic document or telephone  
10          book - all of which have been filed before you - it  
11          doesn't answer the very important question that you put  
12          at the beginning and; that is: Let's proceed in a way  
13          that will shorten the hearing, that will define the  
14          issues and shorten the hearing.

15                   If I am left to try to have to determine  
16          from all the lines of questioning what is really  
17          considered by that cross-examiner to be relevant and  
18          which is the case that I have to present evidence to  
19          meet, or in a document which there may be 32 criticisms  
20          historically of the industry, whether I have to somehow  
21          show that all of those today are not appropriate  
22          because we have had a large historical record put  
23          before us, then we are going to be here a long time and  
24          I disagree with my friend Mr. Campbell, inasmuch as I  
25          would like to agree with him, that our case could

1 easily be as long as the MNR case and I don't want  
2 that.

3 And finally, with respect to this point  
4 that we are getting notice in this way, by asking a  
5 question the cross-examiner is not stating the  
6 position, he doesn't -- by asking the question we don't  
7 get to know the case that he's going to present. In  
8 law, it is not proper or sufficient notice.

9 Perhaps I will just turn, because I have  
10 been following largely the argument to a point that you  
11 raised, Mr. Chairman, in asking certain parties the  
12 question with respect to your earlier ruling with  
13 respect to the restriction of oral examination whether  
14 those parties would agree to it, and most responses  
15 were that the parties would seek instructions.

16 And because the proposal is not put  
17 before us, and I a hundred per cent agree with Mr.  
18 Campbell, that it would be inappropriate and  
19 unnecessary in the course of this motion to make a  
20 ruling to reconsider what you have already ruled.

21 But I will say that the Board's initial  
22 ruling was sound in law and the Board was right when it  
23 said that to adopt the proposal would be unfair to the  
24 proponent and other parties for the reasons you gave  
25 and even more unfair at this further point in the

1 proceeding, I suggest, and as far as my own client's  
2 position, I would have to join those parties in saying  
3 I will get instructions, but I can't imagine even  
4 asking for those instructions if I don't know the case  
5 that we have to meet; what the issues are, what the  
6 positions that are going to be advanced.

7 So that when I come before you I can try  
8 to guess at the cross-examinations of my clients'  
9 witnesses as to what's going to become important in a  
10 subsequent panel which may require further oral  
11 exposition. So that without it, it is quite clear that  
12 it would be impossible.

13 THE CHAIRMAN: Well, when the Board made  
14 made the ruling formerly that it would be unfair, in  
15 its view it would be unfair to the intervening parties  
16 and if intervening parties were willing to come out and  
17 state that in their view it would not be unfair at this  
18 point in time to place a limitation on oral  
19 evidence-in-chief, then obviously the Board's concerns  
20 would be alleviated to some extent.

21 That was the purpose of the Board  
22 recanvassing counsel, particularly those for the  
23 intervenors as to whether or not, if there were a  
24 change contemplated in the procedure at this point,  
25 they would still view it as being unfair as the Board

1       did when it first dealt with it.

2                   MR. COSMAN: All I can say at this time  
3       is that I would have to seek instructions, but I cannot  
4       see and, frankly, cannot imagine saying that it would  
5       be fair to my clients in the circumstances when my  
6       clients do not know what the opposition is going to be  
7       to the way in which they practice forestry in northern  
8       Ontario and that's really what you are looking at.

9                   You are looking at the industries'  
10      management of the forest, you are looking at really the  
11      stewardship of it by the MNR, but the people who are  
12      left to do it, the people whose jobs are going to be  
13      affected, the people whose practices are going to be  
14      affected should have advance, I submit, knowledge,  
15      notice of what my opponents say are the practices that  
16      are unsound environmentally.

17                  Now, I want to deal with the hardship  
18      argument because the the hardship or lack of resources  
19      argument was raised by several parties. And this  
20      argument has been an argument that has been made before  
21      you from time to time and, as you know, Mr. Chairman,  
22      as a matter for another panel as far as the actual  
23      funding is concerned, but I say this:

24                  One cannot argue hardship to defeat a  
25      right of a party if you find that that party had a



1 certain legal right that's going to be affected by the  
2 proceedings of this Board. Hardship cannot, in law, be  
3 used to defeat the rights of my clients because their  
4 rights are legally affected by these proceedings.

5 If we are entitled in law to advance  
6 notice of the case that we have to meet so that we can  
7 prepare to meet it, it is not a valid argument to say  
8 because of hardship the Board should proceed without  
9 giving effect to the legal rights of my clients.

10 It is interesting that it was Mr.  
11 Williams, one of the only parties who didn't receive  
12 funding, was the one that recognized and accepted the  
13 appropriate legal obligation to provide -- to provide  
14 the kind of notice that my motion is asking for and he,  
15 of all parties, I submit, faces the most hardship.

16 In any event, Mr. Chairman, apart from  
17 that, I submit that the argument is not supportable.  
18 First of all, to the extent that the parties now have  
19 certain positions supported by certain examples, it is  
20 not prejudicial to require them to disclose them.  
21 Secondly, there is going to be a period of time before  
22 the MNR's case is complete. If we resume with Panel 8  
23 on February 1, it will be the summer or some time after  
24 by the time that the MNR's case is presented and with  
25 cross-examination, given -- just projecting the kinds

1 of cross-examination that we have seen so far, and it  
2 wouldn't be prejudicial to ask parties now to produce  
3 six to nine months from now the witness statements that  
4 will state their positions and the evidence that  
5 supports it.

6 Mr. Hunter said: Well, I am not going to  
7 be ready until then. I submit it is incumbent upon  
8 counsel to focus on the issues and to bring forward the  
9 examples that they rely upon and, out of fairness, not  
10 only to my client but to this Board, to have those  
11 issues addressed and defined by delineating the issues  
12 between us, the parties that are before you. It is not  
13 reasonable to say that we will not be prepared until we  
14 present our case. I suggest that six or nine months is  
15 reasonable notice.

16 The Board has the clear power to direct a  
17 time and, if they were to do it, I would submit it  
18 would greatly shorten this proceeding.

19 THE CHAIRMAN: What about the parties not  
20 having had the opportunity to hearing your case?

21 MR. COSMAN: Okay. Let me come to that.  
22 I will address that when I address the remarks of Mr.  
23 Campbell.

24 And just finally on this question of  
25 prejudice, I wanted to say - and perhaps this even

1 addresses in part what you are saying now - it is the  
2 way it is done often in multi-party proceedings, there  
3 would be no objection and no prejudice if a party felt  
4 that it had to deliver a supplementary statement to  
5 that which it delivered or supplementary witness  
6 statement. If they were precluded from doing so, I  
7 would agree.

8 That finishes Mr. Castrilli's argument and  
9 I just want to deal briefly with the MNR proposal  
10 insofar as it deals with my motion. And I submit that  
11 the principle is appropriate as stated, I just don't  
12 have it in front of me.

13 MR. CAMPBELL: (handed)

14 MR. COSMAN: Thank you.

15 MR.. CAMPBELL: Don't read the notes.

16 MR. COSMAN: I can't read your writing  
17 anyway.

18 It says:

19 "At the same time any person who intends  
20 to make specific allegations of fact  
21 which are intended to show inappropriate  
22 and environmentally unsound timber  
23 management practices by any person would  
24 give adequate notice of that intention  
25 and of the facts upon which they would

1                               rely."

2                               Now, let's deal with the few problems I  
3       say that exist with it. First of all, I have dealt  
4       with specific allegations of fact. What does that  
5       mean? I think -- if it means the inappropriate or  
6       illegal incident which would be the subject of Section  
7       8 of the Statutory Powers Procedure Act, then I clearly  
8       feel that it would not satisfy the requirements of  
9       procedural fairness.

10                            If it means that a party would be  
11       obliged, if they intend to lead evidence or take a  
12       position that certain practices are inappropriate or  
13       environmentally unsound - whether it's done by one  
14       company, by a group of companies in a certain area or  
15       by industry at large - and if notice were given of  
16       that, if that's what this means, then I think it would  
17       clearly be helpful to the case, helpful to the Board,  
18       helpful in defining the issues and will shorten the  
19       hearing.

20                            It was Mr. Babcock who said that  
21       adequate -- should be given adequate notice doesn't  
22       really give sufficient guidance to the parties and  
23       that's why I am asking for specific guidance by asking  
24       you to use your rules to give effect to the proper  
25       legal principle and require the parties to deliver the



1 witness statements six to nine months from now and  
2 before the evidence in our case goes in.

3 So we would, in principle, agree with the  
4 MNR proposal in this regard but ask for guidance as to  
5 what is meant by specific allegations of fact and by  
6 adequate notice, and what we are asking is that  
7 specific allegations of fact be clear -- clearly stated  
8 in the Board's ruling to mean allegations of certain  
9 practices by the company which are alleged to be either  
10 inappropriate or environmentally unsound.

11 And, secondly, with respect to adequate  
12 notice, I submit that the completest way to do this is  
13 to direct, in accordance with the Board's rule, the  
14 exchange of witness statements at six to nine months  
15 from now but before the OFIA commences its case.

16 Now, I say to you, Mr. Chairman, that  
17 there are other ways you could do it. I mean you could  
18 order parties to prepare statements of their positions  
19 with some particularity and require the parties to  
20 deliver those in advance of the OFIA/OLMA case. That's  
21 another option that's open to you.

22 I have resort to the Board's own rules  
23 and that which I feel will clearly define the issues in  
24 the fairest and fullest way and that is why we are  
25 asking that the exchange of positions be by way of

1 exchange of witness statements.

2 This takes me to the submissions of Mr.  
3 Campbell and Mr. Campbell supports the proposal on the  
4 basis that it will save time. I have indicated that I  
5 support the proposal with the further -- with the  
6 caveats that I have already addressed you on, but I  
7 submit that it will not save time insofar as the  
8 presentation of my case to you is concerned, unless we  
9 know what it is that is the case that we have to meet.

10 So more time will be saved if the  
11 proposal is adopted and the relief that we request is  
12 granted.

13 Secondly, and just as a point in passing,  
14 with respect to interrogatories. I quite agree with  
15 Mr. Campbell that counsel work very well together in  
16 resolving, as best they can, various matters. I do say  
17 though that, and I really think - partly for the reason  
18 that you have indicated, because there are outside  
19 parties - that the Board should direct a time schedule  
20 for the delivery of interrogatories, the Board should  
21 spell it out so that parties will have a clear  
22 framework in which to operate and so we will not all be  
23 back before you asking for that very relief at some  
24 further time with the possibility of delay being  
25 occasioned.

1                   Now, one other general concern about the  
2                   submission of Mr. Campbell on this concept of the  
3                   Board's involvement in the scoping process.

4                   I think that anything that the Board can  
5                   do to scope the issues will be helpful, but I do raise  
6                   one concern, as a matter of law, that must be avoided  
7                   by the Board in so doing. The Board must be clear that  
8                   it doesn't step out of its role as a quasi-judicial  
9                   body and make the mistakes that some tribunals have  
10                  done and enter into a mediation process where the Board  
11                  is saying: This is an issue outside of a public  
12                  hearing, take itself out of the public hearing process  
13                  and the quasi-judicial role that it has in law and  
14                  become a mediator.

15                 In my respectful view, by directing the  
16                 parties to disclose their positions and the statements  
17                 and the reasons they have in support of their position,  
18                 that will naturally focus or scope the issues.

19                 Now, I think I dealt with the restriction  
20                 that Mr. Campbell suggested of restricting my right of  
21                 reply to specific incidents, so I won't deal with that  
22                 again.

23                 THE CHAIRMAN: All right, Mr. Cosman,  
24                 going back a step. Are you suggesting that the Board  
25                 could not -- once witness statements have been

1       exchanged and the parties are clear on what issues are  
2       important to each party, that the Board could not look  
3       at the overall situation and then indicate what areas  
4       it felt to be relevant or irrelevant to its  
5       considerations of the issues. And, by that, saying  
6       that we do not have to hear about this issue because we  
7       feel that, for one reason or another, this issue does  
8       not have to be addressed at the hearing and we do not  
9       feel it is one in contention, or one that concerns the  
10      Board to the extent that we have to have evidence  
11      adduced on it at the hearing itself?

12                   There may be documentary evidence before  
13      us in terms of witness statements or the supporting  
14      documents but we may not have to hear any oral  
15      testimony on it or, for that matter, cross-examination.

16                   MR. COSMAN: You have indicated, Mr.  
17      Chairman - I think it is a very important point - that  
18      if after the exchange of witness statements you may be  
19      in a position to say this is what appears to us to be  
20      the issues on the basis of that exchange.

21                   The problem is if we proceed as we were  
22      doing now, I may not see the last witness statement and  
23      either will you until before the last party presents  
24      its evidence and you will be in a position of having to  
25      determine, on an interim basis, issues or focus issues



1 without having heard certain parties and that, I would  
2 suggest would be inappropriate, that's one point.

3 The second point is: I don't at all --  
4 in fact I would encourage you to say, this appears to  
5 us to be the issue, of course, giving the parties the  
6 right to make submissions if they disagree or call  
7 evidence, if there is some disagreement.

8 But my great concern is that, unless  
9 there is that exchange that you talked about, there can  
10 be no way that the Board could fairly enter into that  
11 process because it will only have heard one side of the  
12 case. And I can't say, for example, at such a meeting  
13 in advance of my case - assuming my witness statements  
14 are with you - that something is important because I  
15 won't know what the position that Mr. Castrilli is  
16 going to take necessarily, or Mr. Babcock or whomever.

17 Now, I want to deal with the argument that  
18 Mr. Campbell makes to attempt to distinguish the legal  
19 principles upon which I rely. He indicates that  
20 because the principle grew out of specific action cases  
21 they are not appropriate.

22 I submit to you that because the  
23 principle grew out of specific action cases, and it did  
24 because that's the way disputes were resolved  
25 historically - there weren't multi-party hearings such

1 as we have in our present day society - but because the  
2 principle grew out of those specific action cases, it  
3 does not mean that parties in multi-party cases whose  
4 rights are clearly affected in the proceedings have  
5 lesser rights than if there were two parties.

6 It does not mean that parties in  
7 multi-party cases where rights are clearly affected in  
8 a proceeding have lesser rights than if there happened  
9 to be just two parties.

10 The courts have extended easily and  
11 readily the principles that I have discussed to cases  
12 of competition -- of competitors in certain situations  
13 in licensing cases where the courts have indicated that  
14 a certain competitor, not just the applicant for the  
15 licence, has the right to know the case that has to be  
16 met. It doesn't take very much to show that those  
17 rights are not extinguished merely because there are  
18 more than one -- more than two parties.

19 Now, my friend's submission was that I am  
20 asking for special status. As with Quebec that always  
21 raises a certain reaction, and I suggest that I am not  
22 asking for special status, unless it means that,  
23 because of the special situation that my clients are  
24 in, they have rights that are affected and, therefore,  
25 certain procedural rights come into play.

1                   If that is what special status is, then I  
2           am asking for special status, but to put it in that  
3           fashion suggests that I am asking for something to  
4           which I am not entitled and I do submit that the rights  
5           of my clients are clearly affected and that certain  
6           procedural rights in law follow.

7                   Now, let's talk about fairness. The  
8           proponent has a clear right of reply, the other  
9           respondents, all of them, will have heard both the  
10          proponent and ourselves before they have had to present  
11          their case. Only my clients -- if we follow the  
12          present procedure, only my clients will not know the  
13          case they have to meet when they present their  
14          evidence, unless the Board remedies this by granting  
15          the relief we are seeking. Mr. Hunter will know both  
16          the proponent's case and my case as will all the other  
17          respondents.

18                   I wish to deal with the submissions of  
19          Mr. Campbell with respect to terms and conditions of  
20          approval. I think, as the Board noted, what Mr.  
21          Campbell was saying is that - and although it wasn't  
22          terribly clear - maybe it was intended that those terms  
23          and conditions would be provided to us before we  
24          present our case so that we would have something to aim  
25          at.

1                   MR. CAMPBELL: If there was any lack of  
2                   clarity about that, Mr. Chairman.

3                   MR. COSMAN: No, it wasn't in your  
4                   submission.

5                   MR. CAMPBELL: Oh. Well, all right,  
6                   because it is certainly our intention that it be  
7                   provided prior to the completion of MNR's case from all  
8                   parties.

9                   MR. COSMAN: All right. Now, that being  
10                  understood there are a number of problems, and I submit  
11                  the procedural requirement of knowing the case we have  
12                  to meet will still not be met and this is why, very  
13                  simply.

14                  One, as all parties have indicated, these  
15                  are preliminary, without prejudice, difficult to do at  
16                  this time; notwithstanding the good faith effort that  
17                  Mr. Campbell has urged upon all of us, terms and  
18                  conditions which are usually left to be determined at  
19                  the point of argument are hard to settle in advance of  
20                  evidence and if Mr. Hunter is being asked to prepare  
21                  such a list or Mr. Castrilli, in advance of my case, I  
22                  concede quite fairly that they might want to revise  
23                  them or throw out what they have done and start again.  
24                  So I wonder how helpful that would be to shortening the  
25                  process. That is my one concern.



1                   A second concern is that it doesn't  
2 necessarily help to assist me in ascertaining the  
3 reasons or basis for a proposed term or condition and  
4 if I feel it is my duty to bring before you evidence  
5 addressed to something and afterwards I say: Oh, that  
6 is what they are getting at after my case is over, the  
7 problem is the terms and conditions may not fulfill  
8 that requirement and, at the end of the day, I am  
9 afraid that we are going to be facing a brand new set  
10 or statement, whatever you want to call it - and I  
11 think substantively there is no difference - a set of  
12 proposed terms and conditions which are going to look  
13 very different from that which have been presented on a  
14 preliminary basis and, in that regard, I don't want to  
15 have to say: Those terms and conditions that were  
16 originally proposed did not give me the notice that Mr.  
17 Campbell suggests I will have of the case that I have  
18 to meet and I am, therefore, going to have to come  
19 before you and ask for a right of reply. I don't want  
20 to have to do that and if the witness statements are  
21 exchanged, that should not be necessary.

22                   I want to deal just briefly with Mr.  
23 Williams' sound submission in writing to you and at  
24 page 3 -- and at page 3, with respect to our motion, he  
25 says:

1                   "The Federation supports and agrees in  
2                   principle..."

3                   I don't know if the Board has it in front  
4                   of them, Mr. Chairman.

5                   THE CHAIRMAN: We do.

6                   MR. COSMAN: He says B(1):

7                   "The Federation supports and agrees in  
8                   principle with the grounds of the motion  
9                   as set out clauses (a) (b) (c) and (d)  
10                  on the assumption that lines 1 and 2 of  
11                  clause (d) are intended to read as  
12                  follows: The delivery of witness  
13                  statements by all parties making  
14                  allegations of inappropriate and  
15                  environmentally unsound timber harvesting  
16                  and regeneration practices by member  
17                  companies after completion of the case of  
18                  the proponent and before the commencement  
19                  of the hearing of the evidence of  
20                  OFIA/OLMA will serve the purpose."

21                  And I submit, Mr. Chairman, I am content  
22                  with the language that Mr. Williams has proposed. He  
23                  indicates that the 60-day time limit which I have  
24                  suggested in my motion is arbitrary and I concede that  
25                  it is, and I say that that was there only in an attempt

1 to try to establish what would be a reasonable time for  
2 us to consider the witness statements before we started  
3 our case.

4 And I would be content with what the  
5 Board considers to be a reasonable time, once the  
6 exchange of witness statements has taken place, to  
7 enable us to sit down with our experts and our clients  
8 and say: This is what our opponents say, what is it  
9 that we should focus on and address in our oral case.  
10 And if that -- and so that I am quite content that that  
11 be, you know, 45 days, as long as there is a period of  
12 time before we commence our case that we can consider  
13 what it is that we have to meet in oral testimony by  
14 our examination of the witness statements.

15 Obviously the day before would be clearly  
16 unsatisfactory, but if the Board felt that something  
17 other than 60 days was sufficient, we would be content  
18 to live with it.

19 And so, finally, my final point in  
20 general reply to what my friends have argued against my  
21 position, my motion. This is clearly an adversarial  
22 process. I can understand why opposing counsel would  
23 not want my client to know what the case is before they  
24 lead their evidence, I can understand that in an  
25 adversarial process, but I submit three things: One,

1       it would be unfair; two, it will not serve the Board's  
2       interest in hearing more than one side of an issue;  
3       and, three, it will unduly lengthen the hearing.

4                   And perhaps I should add, the courts have  
5       made it very clear with respect to evidence that has  
6       not been addressed that it is unreliable. If I had  
7       known -- if I do not know when I present my case what  
8       it is that I have to address, then I submit in relying  
9       upon that - and if I don't have a full right of reply,  
10      and once again I come back to your point, if I have  
11      that right of reply I concede that as long as the right  
12      of reply is in respect of general, as well as specific  
13      allegations, my rights are protected -- my client's  
14      rights are protected.

15                   But, if not, then I submit that this  
16      hearing could conceivably go off the rails judicially  
17      and that is something that none of us wants.

18                   Those are my submissions.

19                   THE CHAIRMAN: Thank you. Thank you, Mr.  
20      Cosman.

21                   Mr. Williams?

22                   MR. WILLIAMS: Thank you, Mr. Chairman.

23      Mr. Chairman, I will honour the ten-minute time  
24      restraint you imposed upon me. I appreciate even  
25      having the opportunity under the circumstances to make



1 comment.

2 Firstly, I would like to thank Mr.  
3 Edwards the professional courtesy extended to me as  
4 counsel for the Federation in introducing my letter by  
5 way of evidence into the hearings the other day as  
6 being the only procedurally appropriate way to do so  
7 and I did want to thank him for that, as I do want to  
8 thank the Board for accommodating the Federation in  
9 this matter, given that we were not able, through  
10 circumstances, to be here to make personal  
11 representations.

12 Mr. Chairman, as had been stated in the  
13 position filed by the Federation in our letter of  
14 August the 31st, we indicated to you that the  
15 Federation was indeed in the process of formulating the  
16 very type of motion or proposal for an order from the  
17 Board such as is proposed by the Ministry in their  
18 letter which has been the subject matter of the  
19 discussion with regard to these motions over the past  
20 several days.

21 So, clearly, our Federation has had no  
22 difficulty with accepting the principles and the  
23 positions put forward by the Ministry and that has been  
24 so stated in our letter. In fact, Mr. Chairman, the  
25 reasons for supporting such an approach have been so

1 eloquently put forward by Mr. Campbell in his opening  
2 statements that simply mirrored the positions that we  
3 intended to take as reasons for putting forward such a  
4 motion, that I needn't pursue the matter further. We  
5 subscribe fully to those three points that were put  
6 forward by Mr. Campbell and they would have constituted  
7 the basic arguments that we would have put forward in  
8 support of this proposal.

9 I gather, Mr. Chairman, from what I have  
10 heard here this afternoon, that in fact the motion put  
11 forward by Forests for Tomorrow was withdrawn, which I  
12 was not aware of until the point was raised by Mr.  
13 Cosman and mentioned later in further argument.

14 My question to you, given that situation,  
15 that that motion is redundant, does that mean, as well,  
16 that the counter-proposal, if you will, being put  
17 forward by the Ministry addresses the second motion --  
18 procedural motion put forward by Forests for Tomorrow  
19 which was a proposal for an amendment to the Board's  
20 procedural directive to require that interrogatories be  
21 filed no earlier than 40 days before a witness panel of  
22 the proponent is to commence examination-in-chief with  
23 replies to such interrogatories to be served on all  
24 parties no later than ten days prior to the  
25 commencement of a panel's evidence or as otherwise

1       ordered by the Board.

2                   THE CHAIRMAN: Well, I think the position  
3       the Board has taken, Mr. Williams, is basically: Mr.  
4       Castrilli's motion is formally withdrawn, we are  
5       considering the proposal put forward by the Ministry of  
6       Natural Resources which covers much of what Mr.  
7       Castrilli's motion originally dealt with and, in  
8       addition to that, the OFIA's motion, again part of  
9       which is dealt with in the Ministry's proposal.

10                   But we are going to be dealing  
11       specifically, I would suggest, with our ruling of all  
12       of the matters which are intertwined. Obviously our  
13       consideration of so aspects of the Ministry's proposal  
14       will have to consider the delivery and exchange of  
15       interrogatories and time for responses and that kind of  
16       thing.

17                   So, once again, I think it is somewhat  
18       muddled on the record as to what motion or proposal or  
19       motions are before us in terms of the formal way in  
20       which they were originally presented, but I think  
21       overall the Board and the parties have a fairly clear  
22       understanding of what issues we are going to address  
23       our minds too.

24                   MR. WILLIAMS: Thank you, Mr. Chairman.  
25       As you can appreciate again, not having yet before me

1 all of the argument which was put forward on last  
2 Thursday, I just wanted to be absolutely clear that  
3 that particular procedural proposal hadn't fallen  
4 between the cracks, so to speak, and I appreciate your  
5 advice that this is being considered in the overall.

6 Mr. Chairman, again I am not going to  
7 provide to you argument on the summary we gave you of  
8 the position we took on the matter other than to, as I  
9 say, advise you that I have heard no argument this  
10 evening that would compel myself, on behalf of the  
11 Federation, to vary our basic positions on the issues  
12 as presented to you in our letter of August 31st.

13 There are simply two matters that I did  
14 want to comment on specifically as they were raised  
15 here this afternoon before concluding my using up the  
16 the balance of my time allotment.

17 Very specifically, in addressing comments  
18 made by Mr. Cosman on the concerns that he has raised,  
19 I appreciate the comments he had to say about our  
20 particular position paper as set out in our letter, but  
21 I did want to make it clear, Mr. Chairman, that we  
22 cited part of his reasons for the motion in clause (d)  
23 because we found it to be lacking.

24 And if I may just address you to that  
25 particular introductory two lines to the clause (d) in



1 question; their motion simply called for delivery of  
2 witness statements of all parties after completion of  
3 the case of the proponent and that would serve their  
4 purpose. We were simply pointing out, Mr. Chairman,  
5 that we didn't feel the necessity for all parties to  
6 file if they were not raising the allegations about  
7 which they were concerned; and, secondly, the obvious  
8 oversight in not suggesting that such statements by  
9 those who are making those allegations would be after  
10 completion of the case of the proponent and, of course,  
11 before they made their own submissions, be obvious.

12 So we were simply pointing out some  
13 deficiencies in the way they had structured their  
14 grounds for motion on that particular point. And we  
15 hope, Mr. Chairman, that that distinction still remains  
16 in your minds, because if there is be an exchange from  
17 positions the Board may, for whatever reason, decide  
18 that there are two different dates that would be  
19 validly applicable to the time frames within which  
20 parties should disclose their positions in whatever  
21 form that you may direct, and it may well be that there  
22 may be another time frame that relates to those who are  
23 making certain allegations against parties to the  
24 hearing which would require that they respond at an  
25 earlier date than all of the parties having respond by

1 a certain time -- within a certain time frame, even  
2 though they had not been involved in making allegations  
3 about inappropriate and environmentally unsound timber  
4 harvesting that seems to nettle a particular party.

5 So, again, I think that distinction  
6 should remain in the minds of the Board to see  
7 whether...

8 THE CHAIRMAN: Well, what kind of  
9 different time frame would be --

10 MR. WILLIAMS: I don't know whether there  
11 would be, there may not be and it may be redundant even  
12 to raise it. I just can't anticipate what the Board  
13 might decide in that regard, other than the fact that  
14 the distinction has been made and whether it would  
15 involve two different time frames - I don't know that  
16 it would or suggest that it would - but, if it did, I  
17 think that distinction would have some bearing on it as  
18 to which parties are making allegations, Mr. Chairman.

19 The only other point I wish to raise, Mr.  
20 Chairman, was with regard again to the views put  
21 forward by counsel for the proponent and I am certainly  
22 impressed with, I guess, the major consideration that  
23 has been cited by counsel, Ms. Murphy, that it really  
24 focuses on the matter of a social fairness in the  
25 issue, in the undertaking and it was on that basis that

1 we have tried to address the issues as well and feel  
2 equally strongly that that is the bottom line to the  
3 whole series of procedural matters before us, that  
4 essential fairness is carried out.

5 Ms. Murphy had suggested that while it is  
6 not normal practice to state their case, so to speak,  
7 or indicate how the Board should address the matters  
8 before it, and that a concise summary of the decision  
9 which the proponent is seeking from the Board need not  
10 be put forward until the conclusion of all the  
11 evidence. I think that that may be the approach in  
12 normal types of hearings, but from the very outset we  
13 have understood that this is indeed a unique and  
14 different type of hearing that goes beyond dealing with  
15 a site or topic specific issue.

16 Even though we are dealing with timber  
17 management as one of the broadest based issues you can  
18 upon, I think we must recognize that it extends even  
19 beyond that, Mr. Chairman, to this Board having, I  
20 suggest, to deal with the very practices and policies  
21 of the Ministry and the Crown and that transcends the  
22 specific management that they conduct with regard to  
23 timber on our Crown lands.

24 I don't know of any other environmental  
25 hearing that the Board has had to -- in which it has

1 had to address such a broad issue that goes even beyond  
2 the issue itself into really the operations of a  
3 ministry of the government, because that essentially is  
4 what it is coming down to. And that is why this  
5 Federation felt it was so important to get out on the  
6 table, at the earliest opportunity, exactly what  
7 direction the Ministry saw itself coming from, at least  
8 in asking the Board to ask for a summary of the  
9 decisions first and foremost from the proponent.

10 And that is why we are well pleased with  
11 what is being proposed here today by the Board and we  
12 will continue to support that position.

13 The one last point on that particular  
14 issue about bringing the summary forward before the  
15 conclusion of evidence. As you will recall, the  
16 Federation had suggested that that be done sooner  
17 rather than later, and we had simply made the bald  
18 arbitrary comment that it should be done by the  
19 conclusion of Panel 8.

20 I think that the observations made by Ms.  
21 Murphy are valid in that the time frame within which  
22 they must be filed perhaps should be best left until we  
23 reconvene on February the 1st by which time the Board  
24 will have a better appreciation as to which it might  
25 want, or if it should be imposing specific time



1 constraints.

2 But I see no difficulty in the Ministry -  
3 and we still take that basic position - in bringing  
4 forward their summary at the earliest possible time on  
5 the understanding that it would be a draft summary and,  
6 we assume, without prejudice as mentioned by other  
7 parties so that it could be, of necessity, modified if  
8 subsequent evidence dictated the necessity to do so.

9 I think those, Mr. Chairman, are really  
10 the highlights and I do appreciate the opportunity to  
11 put on the record the fact that with the benefit of  
12 having heard at least part of the argument by other  
13 counsel that we consider the position we put forward to  
14 be constructive and very helpful to the Board and feel  
15 that the positions put forward are still valid and  
16 sound.

17 Thank you very much, Mr. Chairman.

18 THE CHAIRMAN: Thank you, Mr. Williams.  
19 Mr. Cosman, I trust you want to remain  
20 seated?

21 MR. COSMAN: I do, Mr. Chairman, but I  
22 stand to say so.

23 THE CHAIRMAN: Thank you.

24 Ladies and gentlemen, we have had a  
25 lengthy session and I think it is appropriate to

1 adjourn at this point until 9:30 tomorrow morning.

2 Thank you.

3 ---Whereupon the hearing adjourned at 7:45 p.m., to  
4 reconvene on Wednesday, September 7th, 1988,  
commencing at 9:30 a.m.

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